#L-3049

jd338
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Memorandum 90-123

Subject: Study L-3049 - California Statutory Will

BACKGROUND

A Committee of the Estate Planning, Trust and Probate Law Section is drafting a new California Statutory Will form. The Commission decided that it will submit a recommendation on this subject to the Legislature. This memorandum identifies the policy issues, reviews how other states deal with each issue, compares the existing statutory form with the form as revised by the State Bar Committee, and makes a staff recommendation concerning each issue.

The staff recommended redraft of the statutory wills form is set out as Exhibit 1. The existing California statute is set out as Exhibit 2. The staff recommended revised statute is set out as Exhibit 3. Statutes of other states are set out as Exhibits 5 (Maine Statutory Will), 6 (Michigan statutory will), and 7 (Wisconsin basic will). The State Bar Revision of the statutory form is set out as Exhibit 8.

Need for California Statutory Will; Need for Revision of Form

The California experience with the California Statutory Will forms has been summarized as follows:[1]

> Recent reports from California indicate that the statutory will forms are often improperly completed or are not properly executed.[2] This has led some probate specialists to conclude that the statutory forms should be

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1. Beyer, Statutory Will Methodologies--Incorporated Forms vs Fill-In Forms: Rivalry or Peaceful Coexistence? 94 Dickinson L. Rev. 285 (1990) (footnotes in original renumbered).

2. See Rice. Too Little Too Late, Cal. Law., June 19889, at 36 (Alameda County Court Commissioner Barbara J. Miller stated that most statutory wills are not completed correctly; one-half of statutory wills offered for probate in Los Angeles County are rejected because they are improperly completed or not signed).

abolished.[3] They believe that "mistakes will continue as long as consumers are encouraged to execute their own wills without a lawyer's help."[4] It appears, however, that most probate attorneys think the statutory forms are a good tool for consumers and thus should be retained.[5]

The staff has long been of the view that the existing California Statutory Will forms are so inflexible that they deprive a person who uses the form of the ability to make meaningful decisions concerning the disposition of the person's property. In addition, the apparent inability of many persons properly to complete the form leads us to agree with Alameda County Court Commissioner Barbara J. Miller that the public may be better off without the statutory will forms. Nevertheless, the State Bar sold 175,000 copies of the forms in the first year. And there is no doubt but that consumer organizations would strongly object to the discontinuance of the form. Most probate attorneys think the statutory form is a good idea. Accordingly, the only practical alternative available is to seek to provide a form that is more flexible (increased alternatives for disposition of property) and more likely to be admitted to probate.

Overview of Revisions Under Consideration by Estate Planning, Trust and Probate Law Section

In an attempt to simplify the forms as well as to give consumers a greater opportunity to individualize the statutory will form, the Estate Planning, Trust and Probate Law Section is revising the statutory forms. Michael V. Vollmer (Chair of the State Bar Committee working on this revision) has provided us with a copy of the most recent redraft of the statutory will form prepared by the committee (hereinafter referred to as "State Bar Revision"). The State Bar Revision would make a number of significant changes in existing law.

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3. Id. (Alameda County Court Commissioner Barbara J. Miller indicated that the public may be better off without statutory will option).

4. Rice, supra note [2], at 36.

5. Id. at 36-37.

These changes, which are discussed in some detail later in this memorandum, are:

•Single form; elimination of the statutory will with trust. The Committee believes that the statutory will with trust "is too complex for consumers and has income tax and other problems associated with it. The advantages and disadvantages of family pot trusts should be carefully explained to consumers by an attorney." The staff agrees that the statutory will with trust should not be continued. We do not discuss this point further in this memorandum. We do not provide a form for the statutory will with trust in the revised statute recommended by the staff.

•Identify family members. The State Bar Revision includes a new requirement that the maker of the statutory will list his or her spouse and "living" children.

•Increased alternatives for disposition of property. The property disposition clauses are the key to the statutory will form. This memorandum includes a discussion of the disposition provisions used in the other states that have statutory will forms as well as the revised provisions in the State Bar Revision.

•Special Provision for Minors. This is a new provision the State Bar Revision would add to the statutory will form to permit the maker of the will to defer distribution to a minor beyond age 18, but not later than age 25.

•Improved wording of attestation clause. The State Bar Revision of the attestation clause is designed to make the statutory will truly "self proving."

•Authorize the probate court to admit a "technically defective" statutory will to probate if the court determines that the execution requirements were substantially met.

•Provision for important information in question and answer format at the beginning of the form. This material has been prepared by the State Bar Committee to replace the fairly brief informational statement that now appears at the beginning of the statutory will form.

Uniform Statutory Will Act

The California Commission on Uniform State Laws recently requested that the Law Revision Commission review the Uniform Statutory Will Act with a view to determining whether to recommend its enactment in California. The Uniform Act is prepared primarily for use by attorneys to assist them in providing will preparation services less expensively, more efficiently, and more effectively. The California statutory will

form, on the other hand, is designed primarily to help individuals who wish to use the forms themselves without hiring an attorney.

Accordingly, the Uniform Act and the California Statutory Will serve different needs. The adoption of the Uniform Act would not avoid the need for the California Statutory Will form. Whether the Uniform Act should be adopted presents a completely different policy issue than the issue of whether the California Statutory Will form should be retained and whether it needs revision. For this reason, the staff recommends that the Commission not delay its work on the statutory will form. Work on the statutory will form should go forward, and sometime in the future the staff will prepare a memorandum on the Uniform Act.

REVISION OF PROPERTY DISPOSITION PROVISIONS TO PERMIT GIFTS OF SPECIFIC PROPERTY

EXISTING CALIFORNIA STATUTE

Personal and Household Items

The existing California Statutory Will form includes the following provision:

> 2.1. PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings, household items, personal automobiles, and personal items to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

Scope of provision. The provision covers only the listed types of tangible personal property. It does not cover cash or other personal property (such as bank accounts, securities, bonds, notes, business interests) or real property.

Spouse or child must survive to take. A careful reading of the provision reveals that the children take nothing if the spouse survives. If the spouse does not survive, the listed items are divided equally among the children who survive the maker of the will. If a child of the maker dies before the maker dies, the descendants of that child take nothing. There is no way the testator can change this scheme.

By way of contrast, under the intestate succession rule (Prob. Code § 6402), descendants of a deceased child take by right of

representation. The intestate succession rule is that the property goes to "the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take in the manner provided in Section 240."

Why must these items go to the testator's spouse if the spouse survives the testator? Why did the original drafters of the California Statutory Rule provide a rule that the surviving spouse takes in preference to the children, and that the children take only if the spouse does not survive? The testator (referred to as the "maker" in the State Bar Revision of the statutory form) cannot vary this rule. One reason comes immediately to mind. In the ordinary case, it is to be expected that a testator will want his or her spouse to take the household goods and personal items rather than giving all of them to the surviving children or a third party. The surviving spouse ordinarily will need these items to maintain the household after the death of the testator. Also, giving the surviving spouse these items avoids the need to determine whether and to what extent the particular item of property is community property. (The testator can only give by will his or her one-half of the community property.) Suppose the family automobile was purchased with community property (probably the case in the vast majority of cases where the statutory will is used)? How do we divide the automobile? It can, of course, be sold and the proceeds divided. Also, in many cases, notwithstanding the provision of the will giving these items to the surviving spouse, after the death of the testator, the surviving spouse will divide up the household goods and personal items he or she does not need among the children and grandchildren and perhaps will give certain items to friends of the maker. Perhaps the testator would want to give a particular item of the listed property (such as the automobile or particular item of jewelry) to one of the children or grandchildren or a friend, but this is not permitted by the existing form.

Why must these items go to only the children who survive the testator if there is no surviving spouse? Why did the original drafters provide that only "surviving" children take? The issue of a deceased child takes none of the listed property under the existing

form. Why did the original drafters deviate from the intestate succession rule that gives the property to "the issue of the decedent" and allows the descendants of a deceased child to take? The explanation why the statutory will deviates from the intestate succession rule must be that the drafters of the original statute felt that the different rule was justified because of the particular types of property listed. Perhaps the thought was that it would be easier to divide up the household and personal items if only surviving children were involved and issue of deceased children (ordinarily grandchildren of the testator) were not included. It is interesting to note that the statutory will forms in the other states (Maine, Michigan, and Wisconsin) also provide that only surviving children take household and personal items. Perhaps this is because these other states drew their statutory forms from the California statute which was the first enacted. Nevertheless, the new State Bar Revision provision dealing with this provides for distribution to "my children (with any deceased child's share passing to the deceased child's descendants)." The staff is not persuaded that there is sufficient justification for departing from the intestate succession rule, and we would accept the change proposed by the State Bar Revision which permits the descendants of a deceased child to share in the distribution of personal items and household goods.

Cash Gifts to Person or Charity

The existing California statute includes the following provision:

> 2.2. CASH GIFT TO A PERSON OR CHARITY. I make the following cash gift to the person or charity in the amount stated in words and figures in the box which I have completed and signed. If I fail to sign in the box, no gift is made. If the person mentioned does not survive me, or the charity designated does not accept the gift, then no gift is made. No death tax shall be paid from this gift.

FULL NAME OF PERSON OR CHARITY TO RECEIVE CASH GIFT. (Name only one. Please print.)	AMOUNT OF GIFT $_____ AMOUNT WRITTEN OUT: _____ Dollars
_____	_____ Signature of Testator

This is the only provision of the existing California statute that permits a specific gift. The provision is very limited. The gift must be cash. Only one gift is permitted. The provision is not simple to execute. Moreover, there appears no reason to include the statement "If the person mentioned does not survive me, or the charity designated does not accept the gift, then no gift is made." This should be left to the general law governing wills, including but not limited to the antilapse statute.

STATE BAR REVISION

The State Bar Revision would permit four choices for distribution of household and personal items:

> 3. Items of Personal Property. I give all my furniture, furnishings, household items, clothing, jewelry, automobiles and personal items as follows (SELECT ONE CHOICE ONLY BY SIGNING IN THE APPROPRIATE BOX):
>
> (a) Choice One: If I am now married, to my present spouse, if living; otherwise equally among my children (with any deceased child's share passing to the deceased child's descendants). _____ [ ]
>
> (b) Choice Two: Nothing to my spouse (if I am married); all equally among my children (any deceased child's share shall pass to that child's descendants). _____ [ ]
>
> (c) Choice Three: All to the following person: _____ [ ]
>
> _____
>
> (d) Choice Four: Equally among the following persons who survive me (INSERT EACH PERSON'S NAME): _____ [ ]
>
> _____
>
> _____
>
> _____
>
> _____

(Note that under Choice Three, survival is not required to take. However, survival is required under Choice Four. Is this difference intentional or inadvertent? Note that "clothing" and "jewelry" have been added to the list found in existing law and that the State Bar

Revision list includes "automobiles," rather than "personal automobiles" as under existing law)

The State Bar Revision gives more choices than the existing provision. For example, I can give all the household and personal items to a friend or equally to several friends. This is not permitted under the existing statute. This expansion of the choices may be useful if I am not married.

The State Bar Revision also permits the testator to give the surviving spouse none of the household and personal items that are owned by the testator (the testator's one-half interest in the community property and the testator's separate property). None of the statutory will forms used in other states permit the testator to give all of the testator's share of the household and personal items to someone other than the surviving spouse. Should this alternative be included in the statutory will form? The staff doubts that this alternative will be used and its inclusion adds complexity to the form.

The State Bar Revision also would revise the Cash Gifts provision to simplify the provision and to allow cash gifts up to four persons (instead of one as permitted under the existing form). The following is the revised provision:

> 4. Cash Gifts. I make the following cash gifts in the amounts stated, and I sign my name in the box after each gift. If I don't sign in the box, I do not make a gift. If a named person does not survive me, the gift to that person is void. No death tax shall be paid from these gifts. SIGN AFTER EACH GIFT.
>
> | Name of Person or Charity | Amount of Cash Gift | You sign here |
> |---|---|---|
> | _____ | _____ | |
> | _____ | _____ | |
> | _____ | _____ | |
> | _____ | _____ | |

This revision would increase the ability of the testator to make specific gifts of cash, since it permits four gifts of cash instead of only one as permitted by existing law. However, the revised provision does not permit the testator to give one child the automobile and

another a piece of jewelry and to give the remaining household and personal items to the surviving spouse. This we believe is a serious deficiency in the revised provision.

Even taking into account the revisions that would be made by the State Bar Revision, the staff would prefer a scheme drawn from the schemes used in other states (discussed below).

THE MAINE SCHEME (Maine statute set out in Exhibit 5)

The Maine statute includes the following provision:

> 2.2 PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings, household items, personal automobiles, and personal items to my spouse, if living; otherwise they shall be equally divided among my children who survive me; except as specifically provided below: (specific distribution not valid without signature.)
>
> I leave the following specific items to the person(s) named:

(name)	(description of item)	(signature)

This is a useful provision. It permits me to give a specific gift to up to three individuals, with the balance of the household and personal items going as one would normally expect. However, the form does not provide much space for the description of the item. It is not clear whether the form limits specific gifts to only household and personal items. Does "specific items" include other tangible and intangible personal property? For example, it is not clear that I can give my stock in IBM to one of my children. In addition to the provision for gifts of "specific items," a separate provision of the Maine statute permits a gift of specific real property. This provision is set out below.

> 2.1 REAL PROPERTY. I give all my real property to my spouse, if living; otherwise it shall be equally divided among my children who survive me; except as specifically provided below: (specific distribution not valid without signature.)

I leave the following specific real property to the person(s) named:

(name)	(description of item)	(signature)
_____	_____	_____
_____	_____	_____
_____	_____	_____

This provision, together with the one set out above, permits the testator using the Maine Statutory Will to make specific gifts of real property and of personal and household items and perhaps of other tangible and intangible personal property. Here again, there may be insufficient space on the form for an adequate description of the property.

Another provision of the Maine Statutory Will permits cash gifts to charitable organizations or institutions. However, there is no clear provision in the Maine Statutory Will for a specific gift of a security, bond, mortgage, or personal property used in a trade or business or for a cash gift to an individual.

THE MICHIGAN SCHEME (Michigan statute set out in Exhibit 6)

The Michigan statute includes the following provision:

2.2 PERSONAL AND HOUSEHOLD ITEMS.

> I may leave a separate list or statement either in my handwriting or signed by me at the end, regarding gifts of specific books, jewelry, clothing, automobiles, furniture, and other personal and household items.
>
> I give my spouse all my books, jewelry, clothing, automobiles, furniture, and other personal and household items not included on any such separate list or statement. If I am not married at the time I sign this will, or if my spouse dies before me, my personal representative shall distribute those items, as equally as possible among my children who survive me. If no children survive me, these items shall be distributed as set forth in paragraph 2.3.
>
> Any inheritance tax due shall be paid from the balance of my estate and not from these gifts.

This is very similar to the Maine scheme except that the list of specific gifts is not contained in the text of the form; the list is a separate list that is in addition to the text of the statutory will. There is no limit on the number of gifts that can be made in the

specific list that follows the text of the statutory will. This scheme greatly simplifies the form and its execution and provides great flexibility in the disposition of the testator's property.

The Michigan provision is consistent with a provision of the Uniform Probate Code:

> **Section 2-513. [Separate Writing Identifying Bequest of Tangible Property.]**
>
> Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.
>
> **Comment**
>
> As part of the broader policy of effectuating a testator's intent and of relaxing formalities of execution, this section permits a testator to refer in his will to a separate document disposing of certain tangible personality. The separate document may be prepared after execution of the will, so would not come within Section 2-510 on incorporation by reference. It may even be altered from time to time. It need only be either in the testator's handwriting or signed by him. The typical case would be a list of personal effects and the persons whom the testator desired to take specified items.

The UPC provision is limited to items of tangible property not specifically disposed of by the regular will and does not extend to money, stock, bonds, mortgages, or property used in trade or business. The writing need not be in existence at the time the will is executed. It may be altered by the testator after its preparation.

The staff has not made a search to determine how many states have adopted this UPC provision nor have we made an effort to determine whether the enactment of such a provision in other states has created problems. The existing California statute governing wills does not include this UPC provision.

The separate statement or list permits more space for a complete description of the specific property than would a space in the form itself. Like the Maine scheme, the Michigan form permits specific gifts only of household and personal items; the Michigan form permits specific gifts of "specific books, jewelry, clothing, automobiles, furniture, and other personal and household items." The Michigan statute does not permit me to give my stock in IBM to one of my children.

The separate statement or list scheme is simple and should be easy to understand. However, the Commission has declined to adopt this scheme generally for wills. The question is whether such a scheme should be adopted for the statutory will.

THE WISCONSIN SCHEME (Wisconsin statute set out in Exhibit 7)

The Wisconsin statute includes the following provision:

> 2.1. PERSONAL, RECREATIONAL AND HOUSEHOLD ITEMS. Except as provided in paragraph 2.2, I give all my furniture, furnishings, household items, recreational equipment, personal automobiles and personal effects to my spouse, if living; otherwise they shall be divided equally among my children who survive me.
>
> 2.2. GIFTS TO PERSONS OR CHARITIES. I make the following gifts to persons or charities in the cash amount stated in words (....Dollars) and figures ($....) or of the property described. I SIGN IN EACH BOX USED. I WRITE THE WORDS "NOT USED" IN THE REMAINING BOXES. If I fail to sign opposite any gift, then no gift is made. If the person mentioned does not survive me or if the charity does not accept the gift, then no gift is made.

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.

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FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.

The Wisconsin provision allows the testator to make up to five gifts of specific property. The gifts may be cash, real property, or any type of personal property, whether tangible or intangible. The specific gift provisions are included within the text of the statutory will form, rather than on a separate sheet. Using the Wisconsin form, the testator using the statutory will can give the residence to one child, the car to another, shares of stock to another, and a keepsake to a nonrelative.

STAFF RECOMMENDATION

The staff prefers the scheme used in Wisconsin. The scheme gives the testator the ability to make specific gifts of all kinds of property. We believe that the form is simple to use and easy to understand. We believe that the ability to make specific gifts should apply to all types of property--real, tangible personal property, and intangible personal property. We can accept the limitation that permits only not more than five gifts of specific property. We have adopted the Wisconsin scheme in the staff recommended draft.

The staff would not include the requirement that a person given a specific gift survive the maker of the will. We would leave this to the general antilapse provision. See Prob. Code § 6147. Generally speaking, under the antilapse statute, the issue of the deceased devisee take in place of a devisee who fails to survive the testator if the deceased devisee is kindred of the testator or the testator's spouse. This rule was adopted in the antilapse statute because it is thought to effectuate the likely intent of the testator. We see no reason to apply a contrary rule in the statutory will.

We have some doubt whether it is desirable to include the provision of the State Bar Revision that permits the testator to give all of the household and personal items to the children or one or more friends in a case where the spouse of the testator survives the testator. We believe that the case where the testator will want to make this choice will be rare, but the testator may make the choice by mistake. The Commission should give some thought to whether the form should give the testator this option.

Nevertheless, we have retained in the staff recommended form the four choices that would be given by the State Bar Revision with some revisions in language indicated below. Specifically, we recommend the following provisions:

> 3. ITEMS OF PERSONAL PROPERTY. Except for the particular items listed in paragraph 4 below, I give all my furniture, furnishings, household items, clothing, jewelry, automobiles, and personal items as provided below. (SELECT ONE CHOICE ONLY BY SIGNING IN THE APPROPRIATE BOX.)
>
> Choice One: If my spouse survives me, to my spouse; otherwise to my descendants (my children and the descendants of any deceased child). _____

Choice Two: Nothing to my spouse (if I am married); all to my descendants (my children and the descendants of any deceased child). _____

Choice Three: All to the following person: (INSERT NAME OF ONE PERSON ONLY.) _____

_____

Choice Four: Equally among the following persons: (INSERT EACH PERSON'S NAME.) _____

_____

_____

_____

_____

4. GIFTS OF CASH OR OF PARTICULAR PERSONAL PROPERTY OR REAL ESTATE. (OPTIONAL.) I make the following gifts of cash or of the property described, and I sign my name in the box after each gift. If I don't sign in the box, I do not make a gift. No death tax shall be paid from these gifts. (SIGN AFTER EACH GIFT.)

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGN YOUR NAME IN THIS BOX FOR THIS GIFT.

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGN YOUR NAME IN THIS BOX FOR THIS GIFT.

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGN YOUR NAME IN THIS BOX FOR THIS GIFT.

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FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGN YOUR NAME IN THIS BOX FOR THIS GIFT.

Choices 1 and 2 of paragraph 3 above provide for the distribution of property "to my descendants (my children and the descendants of any deceased child)." The meaning of this language in a case where none of the maker's children survive the maker is determined by existing Probate Code Section 6209. This section would be continued in substance in the revised statute, to read:

§ 6257. Manner of distribution to "descendants"

6257. Property to be distributed under a California Statutory Will to a person's descendants, or to "my descendants (my children and the descendants of any deceased child)," shall be divided into as many equal shares as there are (1) living descendants of the nearest degree of living descendants and (2) deceased descendants of that same degree who leave descendants. Each living descendant of the nearest degree shall receive one share. The share of each deceased descendant of that same degree shall be divided among his or her descendants in the same manner.

Comment. Section 6257 is the same in substance as former Section 6209 (repealed California Statutory Will

statute). The rule stated in Section 6257 is consistent with the general rule concerning taking by representation. See Section 240 (representation).

DISPOSITION OF BALANCE OF ESTATE

EXISTING CALIFORNIA STATUTE

The existing California Statutory Will form contains the following paragraph governing the disposition of the balance of the estate:

> 2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph 2.3 by writing my signature in the box next to the title of the Property Disposition Clause I wish to adopt. I sign in only one box. I write the words "not used" in the remaining boxes. If I sign in more than one box or if I fail to sign in any box, the property will be distributed as if I did not make a will.
> PROPERTY DISPOSITION CLAUSES (Select one.)
>
> (a) TO MY SPOUSE IF LIVING: IF NOT LIVING THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD. _____ [ ]
>
> (b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD. I LEAVE NOTHING TO MY SPOUSE, IF LIVING. _____ [ ]
>
> (c) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL. _____ [ ]

It is not surprising that the person completing the existing form will have difficulty understanding and complying with the complex directions for the disposition clauses relating to all other assets.

STATE BAR REVISION

The State Bar Revision revises the paragraph governing the disposition of the balance of the estate to read:

> 5. Balance of My Assets. I give the balance of my other assets as provided below (SELECT ONE CHOICE ONLY BY SIGNING IN THE APPROPRIATE BOX). If I sign in more than one box or if I don't sign in any box, the court will distribute my assets as if I did not make a will.

(a) Choice One: If I am now married, to my present spouse, if living; otherwise equally among my children (with any deceased child's share passing to the deceased child's descendants). _____ [ ]

(b) Choice Two: Nothing to my spouse (if I am married); all equally among my children (any deceased child's share shall pass to that child's descendants). _____ [ ]

(c) Choice Three: Equally among the following persons who survive me (any deceased person's share shall be added equally among the surviving persons' shares): _____ [ ]
Names of persons:_____
_____
_____
_____

(d) Choice Four: To those persons designated under California law as if I did not have a Will. _____ [ ]

This revision gives one more important choice. Under Choice Three, the maker of the statutory will can give the remainder of his or her estate to a friend or friends or to only one or less than all of the maker's children or descendants of deceased children. This is a significant improvement in the existing form. However, the staff has several problems with Choice Three. We would delete the language "who survive me (any deceased person's share shall be added equally among the surviving persons' shares)." The would eliminate the survival requirement so the antilapse statute would apply. Where the antilapse statute does not apply and the named person does not survive, the general statute governing a failed devise of a share of the residue would apply. See Prob. Code § 6148. We see no need to confuse the person using the form with unnecessary language dealing with this possibility.

STAFF RECOMMENDATION

The staff recommends the following provision to be used in the California Statutory Will to deal with the disposition of the remainder of the estate:

5. Balance of My Property. I give the balance of my property as provided below. (SELECT ONE CHOICE ONLY BY SIGNING IN THE APPROPRIATE BOX.) If I sign in more than one box or if I don't sign in any box, the court will distribute this property to my heirs at law as if I did not make a will.

Choice One: If my spouse survives me, to my spouse; otherwise, to my descendants (my children and the descendants of any deceased child). _____ ☐

Choice Two: Nothing to my spouse (if I am now married); all to my descendants (my children and the descendants of any deceased child). _____ ☐

Choice Three: Equally among the following persons: (INSERT EACH PERSON'S NAME.) _____ ☐

_____

_____

_____

_____

Choice Four: To those heirs at law designated under California law as if I did not have a will. _____ ☐

SPECIAL PROVISIONS FOR PERSONS UNDER 25

STATE BAR REVISION

The State Bar Revision would add a new provision to the Statutory Will to give the maker the ability to delay distribution of property to a beneficiary until the beneficiary attains the age of 25. No similar provision is found in the existing statute. The State Bar Revision provision reads:

6. Special Provisions for Persons Under 25. If a portion of my estate passes to a person under age 25, that portion shall be held as follows. Choice One applies if I don't sign in either box. (SELECT ONE CHOICE ONLY BY SIGNING IN THE APPROPRIATE BOX):

Choice One: Outright to the person (and if the person is under age 18, to the Guardian of the person's Property designed in paragraph 7 below) _____ ☐

Choice Two: To the persons named below in the order designated as custodian for the person until age ____ (insert any age between 18 and 25; if you do not select an age, age 21 will apply) under the California Uniform Transfers to Minors Act (and if I don't name a custodian, the court may designate one):

Name of First Custodian to Serve

Name of Second Custodian to Serve

Name of Third Custodian to Serve

The State Bar Committee states the following in explanation of this addition:

> [This provision] is an expansion of, and substitute for, the present "family pot trust". It expands the concept to "minors" who are not children (e.g., nieces and nephews). Since the Statutory Wills should normally be used only by makers with smaller estates, the California Uniform Transfers to Minors Act (CUTMA) was selected as a simple vehicle to allow many makers to deal with the problem. Many makers felt that age 18 or 21 was simply too young to give assets to children or nieces or nephews, and they asked that they be allowed the flexibility of deferring distribution of assets until any age between 18 and 25 (which is what the California version of CUTMA presently provides).

The staff has serious concerns about this new provision. First, we do not believe that very many persons will understand it. This is a real problem since few persons who will use a Statutory Will form will have the benefit of legal counsel. Second, the provision is inconsistent with the statutory provision in the California Statutory Will statute dealing with the power of the executor. That provision, found in Section 6245 (mandatory clauses of all California statutory wills) reads:

(b) POWERS OF EXECUTOR.

* * * *

(2) The executor may distribute estate assets otherwise distributable to a minor beneficiary to (A) the guardian of the minor's person or estate, (B) any adult person with whom the minor resides or who has the care, custody, or control of the minor, or (C) a custodian, serving on behalf of the minor under the Uniform Gifts to Minors Act of any state or the Uniform Transfers to Minors Act of any state.

The executor is free of liability and is discharged from any further accountability for distributing assets in compliance with the provisions of this paragraph.

STAFF RECOMMENDATION

The staff agrees that many persons will want distribution to beneficiaries under age 25 deferred until the beneficiary reaches 25 or some lower age over age 18. However, we believe that the State Bar Revision provision should not be included in the Statutory Will form. Instead, we would revise the provision relating to the power of the executor under the Statutory Will to deal with this problem. Specifically, we would revise the provision set out above to read:

(2) The executor may distribute estate assets otherwise distributable to a minor beneficiary to (A) the guardian of the minor's person or estate, (B) any adult person with whom the minor resides or who has the care, custody, or control of the minor, or (C) a custodian ~~serving on behalf of~~ for the minor under the ~~Uniform Gifts to Minors Act of any state or the Uniform Transfers to Minors Act of any state~~ California Uniform Transfers to Minors Act, Part 9 (commencing with section 3900), or any other state's Uniform Transfers to Minors Act or Uniform Gifts to Minors Act. The executor may distribute estate assets otherwise distributable to a beneficiary under age 25 to a custodian under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900), in which case the executor shall provide, in making the transfer pursuant to Section 3909, that the time for the transfer to the beneficiary of the custodial property so transferred is delayed until the beneficiary attains the age of 25 years, except that the executor in his or her discretion may provide, in making the transfer pursuant to Section 3909, that the time for transfer to the beneficiary of the custodial property so transferred is delayed only to an earlier time, not earlier than the time the beneficiary attains the age of 18 years. The executor is free of liability and is discharged from any further accountability for distributing assets in compliance with the provisions of this paragraph.

This revision gives the executor the option of making a transfer to a custodian and delaying the direct distribution to the beneficiary until age 25. The executor can make this decision in light of the circumstances existing at the time of the testator's death and at a time when the executor is likely to have the advice of legal counsel. This appears to be a good solution to the problem and does not complicate the Statutory Will form.

IMPROVED WORDING OF ATTESTATION CLAUSE

The State Bar Revision improves the wording of the Attestation clause to make the statutory will truly "self proving." The staff strongly urges the Commission to adopt the wording of the State Bar Revision.

The State Bar Revision revises the Notice to Witnesses regarding the execution procedure to read:

> (NOTICE TO WITNESSES: TWO (2) ADULTS MUST SIGN AS WITNESSES. EACH WITNESS MUST READ THE FOLLOWING CLAUSE BEFORE SIGNING. THE WITNESSES MUST NOT BE RELATED TO THE MAKER AND SHOULD NOT RECEIVE ASSETS UNDER THIS WILL.)

The statement "THE WITNESSES MUST NOT BE RELATED TO THE MAKER" does not appear in the existing California Statutory Will statute and there is no such requirement in California law. The staff would omit the statement.

ADMISSION OF "TECHNICALLY DEFECTIVE" STATUTORY WILL TO PROBATE

As previously indicated, it has been stated that one-half of statutory wills offered for probate in Los Angeles County are rejected because they are improperly completed or not signed. The Committee of the State Bar Section that prepared the revised draft of the California Statutory Will made the following recommendation:

> We recommend that enabling legislation permit the court to admit a "technically defective" Statutory Will to probate if it determines that execution requirements were substantially met. One reviewer suggested that the requirement of witnesses was an anachronism, and should be deleted entirely. Most other reviewers thought that witnesses (particularly on a Statutory Will form) must be required because of the greater possibility of fraud or undue influence being exerted.

Many of the law reform agencies of English commonwealth counties have considered this problem and made recommendations for admission of wills that fail to satisfy the technical requirements for execution of a will. See Exhibit 4 attached. To deal with this problem, the staff recommends the inclusion of the following provision in the statutory will statute:

§ 6270 Validity of will where lack of full compliance with execution requirements

6270. Notwithstanding Section 6110, a document executed on a California Statutory Will form provided by Section 6275 is valid as a will if all of the following requirements are satisfied:

(a) The form is signed by the maker.

(b) The court is satisfied that the maker knew and approved of the contents of the will and intended it to have testamentary effect.

(c) The testamentary intent of the maker as reflected in the document is clear.

Comment. Section 6270 is a new provision. Since the great majority of statutory wills are executed by persons who do not have the advice of counsel, it is important that some provision be made to save statutory wills that otherwise would be invalid because of the failure to comply with the technical execution requirements.

Under Section 6270, the court may find that a document executed on the California Statutory Will form to be a valid will even though not executed with the formalities required by Section 6110. For example, the witnesses might not be "present at the same time" to witness the signing of the will, or one of the witnesses to the will may not be competent to be a witness (see Section 6112), or there may be only one or no witnesses to the will.

EFFECT OF ADDITIONS OR DELETIONS ON STATUTORY FORM

Section 6225 provides:

6225. (a) A California statutory will may be revoked and may be amended by codicil in the same manner as other wills.

(b) Any additions to or deletions from the California statutory will on the face of the California statutory will form, other in accordance with the instructions, are ineffective and shall be disregarded.

Subdivision (a) of Section 6225

Subdivision (a) of Section 6225, which adopts the general law applicable to wills, is unnecessary in view of proposed Section 6265 which provides:

§ 6265. Application of general law

6265. Except as specifically provided in this chapter, the general law of California relating to wills applies to a California Statutory Will.

Comment. Section 6265 is the same in substance as former Section 6248 (repealed California Statutory Will statute). The phrase "relating to wills" has been added to the language of former Section 6248. The section makes clear that, except as provided in this chapter, general California law relating to wills applies to a California Statutory Will. Thus, for example, Sections 6100 ("An individual 18 or more years of age who is of sound mind may make a will"), 6110 (manner of execution of will), 6120 (acts constituting revocation), 6122 (effect of dissolution or annulment of marriage on will), 6123 (second will revoking first will, or subsequent will which revokes a prior will or part expressly or by inconsistency), 6124 (presumption of revocation), 6147 (antilapse statute), and 6148 (failed devises) apply to a statutory will. This chapter may, however, provide a special rule that modifies a rule of the general law relating to wills. For example, Section 6270 permits the court to find valid a defectively executed will executed on a California Statutory Will form if the court is satisfied that the maker signed the will and knew and approved of the contents of the will and intended it to have testamentary effect. For another special rule applicable to a California Statutory Will, see Section 6259 (120-hour survival requirement)

Subdivision (b) of Section 6225

Subdivision (b) of Section 6225 provides that any additions to or deletions from the California statutory will on the face of the California statutory will form, other in accordance with the instructions, are ineffective and shall be disregarded. The staff believes that this is an is an undesirable rule that should not be continued. What if the intent of the testator in making the addition or deletion is clear and it would be inconsistent with the testator's clear intent to disregard the addition or deletion? What if it is clear that the testator did not intend the provision to apply without the addition or deletion, but the testator's intent in making the addition or deletion is unclear?

The apparent assumption underlying the rule set forth in subdivision (b) of Section 6225 is that the addition or deletion was made by someone other than the testator. To avoid this possible fraud, the addition or deletion is to be disregarded and the will is to be

given effect as if the addition or deletion had not been made. The problem the staff has with this assumption is that the staff believes it is far more likely that the testator will seek to modify the inflexible statutory will form to meet the testator's desire. It may be clear that the testator made the addition or deletion. Giving the will effect by disregarding the addition or deletion in this situation obviously defeats the testator's intent. The staff recommends a more flexible provision be substituted for subdivision (b) of Section 6225.

The staff would include the following statement in bold face type in the Notice at the beginning of the statutory will form:

> . **Warning! Do not add or cross out any words on this form (except for filling in the blanks) because all or part of this will may not be valid if you do so.**

We would include this statement because we want to discourage the testator from making unauthorized revisions in the form. We would add the following provision to the statute to deal with the situation where the testator makes unauthorized additions or deletions from the statute:

> **§ 6269. Additions or deletions made on face of will**
>
> 6269. Where an addition to or deletion from the California Statutory Will is made on the face of the California Statutory Will form, other than in accordance with the instructions, the addition or deletion shall be given effect only if the intent of the maker is clear. If the intent is unclear, the court may either determine that the addition or deletion is ineffective and shall be disregarded or may determine all or a portion of the California Statutory Will is invalid, whichever is more likely to be consistent with the intent of the maker.
>
> **Comment.** Section 6269 supersedes subdivision (b) of former Section 6225 (repealed California Statutory Will statute) which provided that an addition to or deletion from the California Statutory Will on the face of the California Statutory Will form, other than in accordance with the instructions, is ineffective and shall be disregarded. Section 6269 gives effect to the maker's testamentary intent where the intent is clear. Thus, the court will give effect to the will with the addition or deletion where that is consistent with the clear intent of the maker. Or the court may ignore the addition or deletion, or may find all or a portion of the will invalid, whichever is more likely to be consistent with the intent of the maker.

PROVIDING INFORMATION TO PERSON EXECUTING THE FORM

The existing statutory will form contains a fairly brief statement at the beginning of the form that advises the person concerning various matters of importance in connection with the execution of the form. The State Bar Revision would substitute for this a fairly lengthy informational statement in the form of questions and answers.

The staff believes that the substance of the brief statement now found at the beginning of the statutory will form should be retained but that it should include a reference to the Questions and Answers which would be found at the end of the statutory will packet. We fear that if too much information is included in front of the statutory will itself, the testator will not read any of it. We believe it is better to note the most important matters at the front of the statutory will packet and to refer the testator to the Questions and Answers for more detail and additional information.

The State Bar Revision would print definitions at the beginning of the form. The staff recommends against this because the definitions will not be understandable to the average person. However, we would continue the present requirement that the definitions and full text of the disposition and mandatory clauses be printed following the text of the form.

IDENTIFICATION OF FAMILY MEMBERS

The existing California form does not require the testator to name immediate family members. The State Bar Revision form does. The reason is: "This may be important if the signer of the Will (hereafter "maker") decides to deliberately omit someone."

The State Bar Revision form requires the listing of the spouse and the "living children" of the testator. We believe this information is readily available, and listing only living children is not sufficient since decedent's of deceased child share whenever the estate goes to children. To list only living children is likely to confuse the person using the will form: The person may believe that a "deceased child" for the purpose of the will is one living when the will was signed but who died before the testator. The person may believe that only living children will take under the will. The person may believe that he or she can disinherit a living child by not listing the child.

STAFF RECOMMENDED FORM AND REVISED STATUTE

A staff recommended draft of a revised Statutory Will form is set out as Exhibit 1.

A staff recommended redraft of the statutory will statute is set out as Exhibit 3. The revised statute includes the provisions of existing law (after July 1, 1991) which provide a 120-hour requirement for a beneficiary (Chapter 710 of the Statutes of 1990) and provide that the estate does not pass under the in-law inheritance statute (Chapter 79 of the Statutes of 1990). The changes made in the language of the existing statute by the revised statute are indicated in the Comments to the sections of the revised statute.

The existing California statute is set out as Exhibit 2.

Respectfully submitted,

John H. DeMoully
Executive Secretary

Exhibit 1
Staff Recommended Revised Statutory Will Form

CALIFORNIA STATUTORY WILL

NOTICE

1. **Any person age 18 or over and of sound mind may sign a will.**
2. **There are several kinds of wills. If you choose to complete this form, you will have a California Statutory Will. If this will does not meet you wishes in any way, you should talk with a lawyer before using this form.**
3. **The full text of statutory provisions (Definitions and Rules of Construction, the Property Disposition Clauses, and the Mandatory Clauses) that apply to this California Statutory Will are contained in the California Probate Code and a copy is attached to this form.**
4. **This will has no effect on jointly-held property, on retirement plan benefits, or on life insurance on your life if you have named a beneficiary who survives you.**
5. **This will is not designed to reduce taxes. You may want to discuss the taxes with a tax advisor.**
6. **This will treats adopted children the same as natural children. You should talk to a lawyer if you have step-children or foster children you have not adopted or if you have children born when you were not married.**
7. **You should keep this will in your safe deposit box or other safe place. You should tell your family where the will is kept.**
8. **You may revoke this will, and you may change it by making and signing a new will. If you marry or divorce after you sign this will, you should make and sign a new will.**

The Questions and Answers sheets attached to this form contain additional information to help you understand about wills and to help you to decide if this California Statutory Will form meets your needs. You should read the Questions and Answers before you use this form.

INSTRUCTIONS

1. **Read the entire will form carefully before you begin filling in the blanks. If there is anything you do not understand, you should ask a lawyer to explain it to you.**
2. **Complete the blanks on the will form. Follow the instructions on the form carefully. Warning! Do not add or cross out any words on the form (except for filling in the blanks) because all or part of this will may not be valid if you do so.**
3. **Date and sign the will and have two witnesses sign it. You and the witnesses must read and follow the witnessing procedure described at the end of this will.**

CALIFORNIA STATUTORY WILL OF

(Print Your Full Name.)

1. **Will.** This is my will. I revoke all prior wills and codicils.

2. **Household and Personal Items.** Except for the particular items listed in paragraph 3 below, I give all my furniture, furnishings, household items, clothing, jewelry, automobiles and personal items as provided below. **(Select one choice only by signing in the appropriate box.)**

a. **Choice One:** If my spouse survives me, to my spouse; otherwise to my descendants (my children and the descendants of any deceased child).

b. **Choice Two:** Nothing to my spouse (if I am married); all to my descendants (my children and the descendants of any deceased child).

c. **Choice Three:** All to the following person:

_____

d. **Choice Four:** Equally among the following persons: **(Insert each person's name.)**

_____

_____

_____

_____

3. **Gifts of Cash or of Particular Personal Property or Real Estate. (Optional.)** I make the following gifts of cash or of the property described, and I sign my name in the box after each gift. If I don't sign in the box, I do not make a gift. No death tax shall be paid from these gifts. **(Sign after each gift.)**

Full Name of Person or Charity to Receive Gift (Name only one. Please Print.)	**Amount of Cash Gift or Description of Property**	**Sign Your Name In This Box for This Gift**

Full Name of Person or Charity to Receive Gift (Name only one. Please Print.)	**Amount of Cash Gift or Description of Property**	**Sign Your Name In This Box for This Gift**

Full Name of Person or Charity to Receive Gift (Name only one. Please Print.)	Amount of Cash Gift or Description of Property	Sign Your Name In This Box for This Gift

Full Name of Person or Charity to Receive Gift (Name only one. Please Print.)	Amount of Cash Gift or Description of Property	Sign Your Name In This Box for This Gift

Full Name of Person or Charity to Receive Gift (Name only one. Please Print.)	Amount of Cash Gift or Description of Property	Sign Your Name In This Box for This Gift

4. **Balance of My Property.** I give the balance of my property as provided below. **(Select one choice only by signing in the appropriate box.)** If I sign in more than one box or if I don't sign in any box, the court will distribute this property to my heirs at law as if I did not make a will.

a. **Choice One**: If my spouse survives me, to my spouse; otherwise to my descendants (my children and the descendants of any deceased child). ☐

b. **Choice Two**: Nothing to my spouse (if I am married); all to my descendants (my children and the descendants of any deceased child). ☐

c. **Choice Three**: Equally among the following persons: **(Insert each person's name.)** ☐

_____

_____

_____

_____

d. **Choice Four**: To those heirs at law designated under California law as if I did not have a will.

5. **Guardian.** If I have a child under age 18 and the child does not have a living parent at my death, I nominate the following persons to serve in the order designated as guardian of each of my children who requires one: **(An individual can serve as Guardian of the Person, or Guardian of the Property, or of both. A corporation can serve only as Guardian of the Property.)**

Name of First Guardian of the Person
Name of Second Guardian of the Person
Name of Third Guardian of the Person

Name of First Guardian of the Property
Name of Second Guardian of the Property
Name of Third Guardian of the Property

6. **Executor.** I nominate the following individuals or corporations to serve in the order designated as executor: **(You may name one, two or three individuals or corporations to serve consecutively; if you don't name any, the court will appoint one for you.)**

Name of First Executor To Serve
Name of Second Executor To Serve
Name of Third Executor To Serve

7. **Bond.** My signature in this box means a bond is not required for any person named as executor or guardian. A bond will be required if I do not sign in this box. **(Your estate must pay for the bond if one is required.)**

No bond shall be required.	

(Notice: you must sign this will in the presence of two (2) adult witnesses. The witnesses must sign their names in your presence and in each other's presence. You must first read to them the following two sentences.)

This is my will. I ask the persons who sign below to be my witnesses.

Signed on _____ at _____ , California.

(Date) (City)

_____

Signature of Maker of Will

(NOTICE TO WITNESSES: Two (2) adults must sign as witnesses. Each witness must read the following clause before signing. The witnesses should not receive property under this will).

Each of us declares under penalty of perjury under the laws of the State of California that the following is true and correct:

(i) on the date written below the maker of this will declared to us that this instrument was the maker's will and requested us to act as witnesses to it;

(ii) we understand this is the maker's will;

(iii) the maker signed this will in our presence, all of us being present at the same time;

(iv) we now, at the maker's request, and in the maker's and each other's presence, sign below as witnesses;

(v) we believe the maker is of sound mind and memory;

(vi) we believe that this will was not procured by duress, menace, fraud, or undue influence;

(vii) the maker is age 18 or older; and

(viii) each of us is now age 18 or older, is a competent witness, and resides at the address set forth after his or her name.

Dated: _____ , 19 __

Signature _____ Residence Address: _____

Signature of Witness

Print Name Here: _____ _____

Signature _____ Residence Address: _____

Signature of Witness

Print Name Here: _____ _____

AT LEAST TWO WITNESSES MUST SIGN

A NOTARY IS NOT REQUIRED OR SUFFICIENT

DEFINITIONS AND RULES OF CONSTRUCTION

(Statutory Provisions Found in California Probate Code)

§ 6251. Descendants

6251. "Descendants" means children, grandchildren, and their lineal descendants of all generations, with the relationship of parent and child at each generation being determined as provided in California Probate Code Section 6152. A reference to "descendants" in the plural includes a single descendant where the context so requires.

§ 6252. Executor

6252. "Executor" means both the person designated as executor in a California Statutory Will and any other person acting at any time as the executor or administrator under a California Statutory Will.

§ 6253. Heirs at law

6253. "Heirs at law" means those persons who would take under California Probate Code Sections 6401 and 6402 if the maker did not have a will.

§ 6254. Maker

6254. "Maker" means a person who makes a California Statutory Will.

§ 6255. Person

6255. "Person" includes individuals and institutions.

§ 6256. Spouse

6256. "Spouse" means the maker's husband or wife who is married to the maker both at the time the maker signs the California Statutory Will and at the time the maker dies.

§ 6257. Manner of distribution to "descendants"

6257. Property to be distributed under a California Statutory Will to a person's descendants, or to "my descendants (my children and the descendants of any deceased child)," shall be divided into as many equal shares as there are (1) living descendants of the nearest degree of living descendants and (2) deceased descendants of that same degree who leave descendants. Each living descendant of the nearest degree shall receive one share. The share of each deceased descendant of that same degree shall be divided among his or her descendants in the same manner.

§ 6258. 120-hour survival requirement

6258. A reference in a California Statutory Will to a person who "survives me" or its equivalent means a person who survives the decedent by 120 hours. A person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for the purpose of the California Statutory Will, and the beneficiaries are determined accordingly. If it cannot be established by clear and convincing evidence that a person who would otherwise be a beneficiary has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. The requirement of this section that a person who survives the decedent must survive the decedent by 120 hours does not apply if the application of the 120-hour survival requirement would result in the escheat of property to the state.

§ 6259. Masculine pronouns; singular and plural words

6259. Masculine pronouns include the feminine, and plural and singular words include each other, where appropriate.

PROPERTY DISPOSITION CLAUSES

§ 6276. Full text of clauses concerning disposition of household and personal items (paragraphs 2a to 2d)

6276. The following are the full texts of paragraphs 2a to 2d, inclusive, of the California Statutory Will:

(a) **Paragraph 2a (Choice One)**: If I am married and my spouse survives me, I give my spouse all my books, jewelry, clothing, automobiles, household furnishings and effects, and other tangible articles of a household or personal use. If my spouse does not survive me, I give these items to my descendants. If none of my descendants survives me, these items shall become part of the balance of my estate.

(b) **Paragraph 2b (Choice Two)**: I give all my books, jewelry, clothing, automobiles, household furnishings and effects, and other tangible articles of a household or personal use to my descendants. If none of my descendants survives me, these items shall become part of the balance of my estate.

(c) **Paragraph 2c (Choice Three)**: I give all my books, jewelry, clothing, automobiles, household furnishings and effects, and other tangible articles of a household or personal use to the person named below.

(d) **Paragraph 2d (Choice Four)**: I give all my books, jewelry, clothing, automobiles, household furnishings and effects, and other

tangible articles of a household or personal use to the persons named below, to be divided among them in as nearly equal shares as practical in my executor's discretion.

§ 6277. Full text of clauses concerning disposition of balance of assets (paragraphs 4a to 4d)

6277. The following are the full texts of paragraphs 4a to 4d, inclusive, of the California Statutory Will:

(a) **Paragraph 4a (Choice One):** If I am married and my spouse survives me, I give my spouse the balance of my estate. If my spouse does not survive me, I give the balance to my descendants. If none of my descendants survives me, I give the balance to my heirs at law.

(b) **Paragraph 4b (Choice Two):** I give the balance of my estate to my descendants. If none of my descendants survives me, I give the balance to my heirs at law.

(c) **Paragraph 4c (Choice Three):** I give the balance of my estate to the persons named below, to be divided among them in equal shares.

(d) **Paragraph 4d (Choice Four):** I give the balance of my estate to my heirs at law.

MANDATORY CLAUSES

§ 6278. Full Text of mandatory clauses

6278. The mandatory clauses of the California Statutory Will are as follows:

(a) **Intestate Disposition.** If I have not made an effective disposition of the balance of my estate, the executor shall distribute it to my heirs at law.

(b) **Executor's Powers.**

(1) The executor has all powers now or later conferred upon executors by California law. This includes all powers granted under the Independent Administration of Estates Act. This also includes the power to: (A) sell estate assets at public or private sale with or without notice, for cash or on credit terms, (B) lease estate assets without restriction as to duration, and (C) invest any surplus moneys of the estate in real or personal property, as the executor deems advisable.

(2) The executor may distribute estate assets otherwise distributable to a minor beneficiary to (A) the guardian of the minor's person or estate, (B) any adult person with whom the minor resides and who has the care, custody, or control of the minor, or (C) a custodian for the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with section 3900), or any other state's Uniform Transfers to Minors Act

or Uniform Gifts to Minors Act. The executor may distribute estate property otherwise distributable to a beneficiary under age 25 to a custodian under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900), in which case the executor shall provide, in making the transfer to the custodian pursuant to Section 3909, that the time for the transfer to the beneficiary of the custodial property so transferred is delayed until the time the beneficiary attains 25 years of age, except that the executor shall have discretion to provide in the transfer to the custodian that the time for the transfer to the beneficiary shall be delayed only to an earlier time not earlier than the time the beneficiary attains the age of 18 years. The executor is free of liability and is discharged from any further accountability for distributing assets pursuant to this paragraph.

(3) On any distribution of assets from the estate, the executor shall have the discretion to partition, allot, and distribute the assets (A) in kind, including undivided interests in an asset or in any part of it, or (B) partly in cash and partly in kind, or (C) entirely in cash. If a distribution is made to more than one beneficiary, the executor shall have the discretion to distribute assets among them on a pro rata or non-pro rata basis, with the assets valued as of the date of distribution.

(c) **Guardian's Powers.** A guardian of the person nominated in the California Statutory Will has the same authority with respect to the person of the ward as a parent having legal custody of a child would have. A guardian of the estate nominated in the California Statutory Will has all of the powers conferred by California law. All powers granted to guardians in this paragraph may be exercised without court authorization.

QUESTIONS AND ANSWERS ABOUT THIS CALIFORNIA STATUTORY WILL

The following information, in question and answer form, is **not** a part of the California Statutory Will. It is designed to help you understand about wills and to decide if this will meets your needs.

1. **What happens if I die without a will?** If you die without a will, what you own (your "assets") in your name alone will be divided among your spouse, children, or other relatives according to state law. The court will appoint a relative to collect and distribute your assets.

2. **What can a will do for me?** In a will you can designate who will receive your assets at your death. You can designate someone (called an "executor") to appear before the court, collect your assets, pay your debts and taxes, and distribute your assets as you specify. You can nominate a guardian to raise your children who are under age 18. You can nominate a guardian to manage assets for your children until they reach age 18, or you can designate someone to manage the assets for your children until they reach age 25.

3. **Does a will avoid probate?** No. Whether or not you die with a will, assets in your name alone usually go through the court probate process. The court's first job is to determine if your will is valid.

4. **What is community property? Can I give away my share in my will?** If you are married and you or your spouse earned money during your marriage from work and wages, that money (and the assets bought with it) is community property. You will can only give away your one-half of community property. Your will cannot give away your spouse's one-half of community property.

5. **Does my will give away all of my assets? Do all assets go through probate?** No. Money in a joint tenancy bank account automatically belongs to the other named owner

without probate. If your spouse or child is on the deed to your house as a joint tenant, the house automatically passes to him or her. Life insurance and retirement plan benefits may pass directly to the named beneficiary. A will does **not** necessarily control how these types of "non-probate" assets pass at your death.

6. **Are there different kinds of wills?** Yes. There are handwritten wills, typewritten wills, attorney-prepared wills and statutory wills. All are valid if done precisely as the law requires. You should see a lawyer if you do not want to use this statutory will or if you do not understand this form.

7. **Who may use this will?** This will is based on California law. It is designed for only California residents. You may use this form if your are single, married, or divorced. You must be age 18 or older and of sound mind.

8. **Are there any reasons why I should not use this Statutory Will?** Yes. This is a simple will. It is **not** designed to reduce death or any other taxes. Talk to a lawyer to do tax planning, particularly if (i) your assets will be worth more than $600,000 at your death, or (ii) you own business related assets, or (iii) you want to create a trust fund for your children's education or other purposes, or (iv) you own assets in some other state, or (v) you want to disinherit your spouse or descendants, or (vi) you have valuable interests in pension or profit sharing plans. You should talk to a lawyer who knows about estate planning if this will does not meet your needs. This will treats most adopted children like natural children. You should talk to a lawyer if you have step-children or foster children whom you have not adopted or if you have children born while you were not married.

9. **May I add or cross out any words on this will?** No. If you do, the will may be invalid. You may only fill in the blanks. You may amend this will by a separate document (called a codicil). Talk to a lawyer if you want to do

something with your assets which is not allowed in this form.

10. **May I change my will?** Yes. A will is not effective until you die. You may make and sign a new will. You may change your will at any time, but only by an amendment (called a codicil). You can give away or sell your assets before your death. Your will only affects what you own at death.

11. **Where should I keep my will?** After you and the witnesses sign the will, keep your will in your safe deposit box or other safe place. You should tell trusted family members where your will is kept.

12. **When should I change my will?** You should make and sign a new will if you marry or divorce after you sign this will. Divorce (dissolution of marriage) or annulment automatically cancels (a) all property stated to pass to a former husband or wife under this will, and (b) designation of a former spouse as executor or guardian. You should sign a new will when you have more children, or if your spouse or a child dies. You may want to change your will if there is a large change in the value of your assets.

13. **What can I do if I do not understand something in this will?** If there is anything in this will you do not understand, ask a lawyer to explain it to you.

14. **What is an executor?** An "executor" is the person you name to collect your assets, pay your debts and taxes, and distribute your assets as the court directs. It may be a person or it may be a qualified bank or corporation.

15. **What is a guardian? Do I need to designate one?** If you have children under age 18, you should designate a guardian of their "persons" to raise them. You may also want to designate a guardian of their "estates" to manage their assets for them until they reach age 18. At age 18, they receive their assets outright. However, this will permits your executor to transfer the assets to a "custodian" and to direct that the custodian hold the assets until your children reach a

higher age, but not later than the time they reach age 25.

16. **Should I require a bond?** You may require that a guardian or executor provide a "bond". A bond is a form of insurance to replace assets that may be mismanaged or stolen by the guardian or executor. The cost of the bond is paid from the assets of your estate.

18. **What is a trust?** A trust is a long-term arrangement where a manager (called a "trustee") invests and manages assets for someone (called a "beneficiary") who may be young, or immature, or elderly, or who has a problem or disability. A trust may be created in a will or outside of a will. The trustee invests and manages the assets for the beneficiary under the terms you specify. Trusts are too complicated to be used in this simple will. You should see a lawyer if you want to establish a trust.

19. **Should I ask people if they are willing to serve before I designate them as an executor or guardian?** Probably yes. Some people and entities may **not** consent to serve or may **not** be qualified to act.

EXISTING STATUTE WITH COMMENTS

CHAPTER 6. CALIFORNIA STATUTORY WILL

Article 1. Definitions and Rules of Construction

§ 6200. Definitions and rules of construction that govern this chapter

6200. Unless the provision or context clearly requires otherwise, these definitions and rules of construction govern the construction of this chapter.

Comment. Section 6200 continues Section 6200 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6200 of Repealed Code

Section 6200 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued the substance of the introductory clause of former Probate Code Section 56 (repealed by 1983 Cal. Stat. ch. 842 § 18).

§ 6201. Testator

6201. "Testator" means a person choosing to adopt a California statutory will.

Comment. Section 6201 continues Section 6201 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6201 of Repealed Code

Section 6201 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued subdivision (a) of former Probate Code Section 56 (repealed by 1983 Cal. Stat. ch. 842 § 18).

§ 6202. Spouse

6202. "Spouse" means the testator's husband or wife at the time the testator signs a California statutory will.

Comment. Section 6202 continues Section 6202 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of

execution of will; statutory will executed on form prepared for use under prior law). As to the effect of termination of the marriage by dissolution or annulment after execution of the will, see Section 6226.

Background on Section 6202 of Repealed Code

Section 6202 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued subdivision (b) of former Probate Code Section 56 (repealed by 1983 Cal. Stat. ch. 842 § 18).

§ 6203. Executor

6203. "Executor" means both the person so designated in a California statutory will and any other person acting at any time as the executor or administrator under a California statutory will.

Comment. Section 6203 continues Section 6203 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6203 of Repealed Code

Section 6203 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued subdivision (c) of former Probate Code Section 56 (repealed by 1983 Cal. Stat. ch. 842 § 18).

§ 6204. Trustee

6204. "Trustee" means both the person so designated in a California statutory will and any other person acting at any time as the trustee under a California statutory will.

Comment. Section 6204 continues Section 6204 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6204 of Repealed Code

Section 6204 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued subdivision (d) of former Probate Code Section 56 (repealed by 1983 Cal. Stat. ch. 842 § 18).

§ 6205. Descendants

6205. "Descendants" means children, grandchildren, and their lineal descendants of all generations, with the relationship of parent and child at each generation being determined as provided in Section 6152. A reference to "descendants" in the plural includes a single descendant where the context so requires.

Comment. Section 6205 continues Section 6205 of the repealed Probate Code without change. This section applies the rules of construction of wills for determining the parent-child relationship. This makes the construction of a California statutory will consistent with the construction of wills generally. This section applies to every California statutory will, including those executed before January 1, 1985. See Section 6247. As to the application of any amendments made after that date, see Section 3.

Background on Section 6205 of Repealed Code

Section 6205 was added by 1983 Cal. Stat. ch. 842 § 55 and was amended by 1984 Cal. Stat. ch. 892 § 33, 1985 Cal. Stat. ch. 359 § 5, and 1985 Cal. Stat. ch. 982 § 18. The section continued subdivision (e) of former Probate Code Section 56 (repealed by 1983 Cal. Stat. ch. 842 § 18). The 1984 amendment revised Section 6205 to refer to the definitions of "parent" and "child" under Sections 26 and 54. The second sentence of Section 6205 (which was added by the 1984 amendment) continued subdivision (b) of former Probate Code Section 6206 (repealed by 1984 Cal. Stat. ch. 892 § 34). As to the 1984 amendment, see Recommendation Relating to Revision of Wills and Intestate Succession Law, 17 Cal. L. Revision Comm'n Reports 537 (1984). The 1985 amendment substituted the reference to Section 6152 (rules of construction for wills) for the former reference to the definitions of child and parent in Sections 26 and 54. Formerly Section 6205 applied the intestate succession rules for determining the parent-child relationship (see former Sections 6408, 6408.5) because Sections 26 and 54 incorporated those rules. As to the 1985 amendment, see Communication Concerning Assembly Bill 196, 18 Cal. L. Revision Comm'n Reports 367, 374 (1986).

§ 6206. References to Uniform Gifts to Minors Act

6206. A reference in a California statutory will to the "Uniform Gifts to Minors Act of any state" includes both the Uniform Gifts to Minors Act of any state and the Uniform Transfers to Minors Act of any state.

Comment. Section 6206 continues Section 6206 of the repealed Probate Code without change. This section applies to every California statutory will, including those executed before January 1, 1985. See Section 6247. As to the application of any amendments made after that date, see Section 3.

Background on Section 6206 of Repealed Code

Section 6206 was added by 1984 Cal. Stat. ch. 892 § 35. The section was added in recognition that the Uniform Gifts to Minors Act (1966) had been superseded by the Uniform Transfers to Minors Act (1986). See also Sections 6245, 6246. See Communication of Law Revision Commission Concerning Assembly Bill 2290, 18 Cal. L. Revision Comm'n Reports 77, 88 (1986). See also Recommendation Relating to Revision of Wills and Intestate Succession Law, 17 Cal. L. Revision Comm'n Reports 537 (1984).

§ 6207. Masculine pronouns; singular and plural words

6207. Masculine pronouns include the feminine, and plural and singular words include each other, where appropriate.

Comment. Section 6207 continues Section 6207 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6207 of Repealed Code

Section 6207 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued subdivision (g) of former Probate Code Section 56 (repealed by 1983 Cal. Stat. ch. 842 § 18).

§ 6208. Use of "shall" or "may" in statutory will

6208. (a) If a California statutory will states that a person shall perform an act, the person is required to perform that act.

(b) If a California statutory will states that a person may do an act, the person's decision to do or not to do the act shall be made in the exercise of the person's fiduciary powers.

Comment. Section 6208 continues Section 6208 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6208 of Repealed Code

Section 6208 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued the substance of subdivision (h) of former Probate Code Section 56 (repealed by 1983 Cal. Stat. ch. 842 § 18).

§ 6209. Manner of distribution to "descendants"

6209. Whenever a distribution under a California statutory will is to be made to a person's descendants, the property shall be divided into as many equal shares as there are then living descendants of the nearest degree of living descendants and deceased descendants of that same degree who leave descendants then living; and each living descendant of the nearest degree shall receive one share and the share of each deceased descendant of that same degree shall be divided among his or her descendants in the same manner.

Comment. Section 6209 continues Section 6209 of the repealed Probate Code without change. The rule stated in Section 6209 is consistent with the general rule concerning taking by representation. See Section 240 (representation). Section 6209 does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of

execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6209 of Repealed Code

Section 6209 was added by 1983 Cal. Stat. ch. 842 § 55. The Section continued the substance of subdivision (i) of former Probate Code Section 56 (repealed by 1983 Cal. Stat. ch. 842 § 18).

§ 6210. Person

6210. "Person" includes individuals and institutions.

Comment. Section 6210 continues Section 6210 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6210 of Repealed Code

Section 6210 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued subdivision (j) of former Probate Code Section 56 (repealed by 1983 Cal. Stat. ch. 842 § 18).

§ 6211. 120-hour survival requirement

6211. A reference in a California statutory will to a person "if living" or who "survives me" means a person who survives the decedent by 120 hours. A person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for the purpose of the California statutory will, and the beneficiaries are determined accordingly. If it cannot be established by clear and convincing evidence that a person who would otherwise be a beneficiary has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. The requirement of this section that a person who survives the decedent must survive the decedent by 120 hours does not apply if the application of the 120-hour survival requirement would result in the escheat of property to the state.

Comment. Section 6211 was added to the new Probate Code by 1990 Cal. Stat. ch. [SB 1775] § 15 to provide a 120-hour survival rule for the beneficiary of a statutory will. Section 6211 is the same in substance as Section 6403 (requirement that heir survive decedent by 120 hours). Section 6211 does not apply if the testator died before the operative date of the section. See Section 6247. See also Section 230 (petition to determine for the purposes of Section 6211 whether one person survived another). For background on this section, see Recommendation Relating to Survival Requirement for Beneficiary of Statutory Will, 20 Cal. L. Revision Comm'n Reports 549 (1990).

Article 2. General Provisions

§ 6220. Persons who may execute statutory will

6220. Any individual of sound mind and over the age of 18 may execute a California statutory will under the provisions of this chapter.

Comment. Section 6220 continues Section 6220 of the repealed Probate Code without change. An emancipated minor is considered as being over the age of majority for the purpose of making or revoking a will. See Civil Code § 63. Section 6220 does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6220 of Repealed Code

Section 6220 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued the substance of former Probate Code Section 56.1 (repealed by 1983 Cal. Stat. ch. 842 § 18).

§ 6221. Execution procedure

6221. A California statutory will shall be executed only as follows:

(a) The testator shall complete the appropriate blanks and shall sign the will.

(b) Each witness shall observe the testator's signing and each witness shall sign his or her name in the presence of the testator.

Comment. Section 6221 continues Section 6221 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6221 of Repealed Code

Section 6221 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued the substance of a portion of former Probate Code Section 56.2 (repealed by 1983 Cal. Stat. ch. 842 § 18).

§ 6221.5. Execution of attestation clause

6221.5. The execution of the attestation clause provided in the California statutory will by two or more witnesses satisfies Section 8220.

Comment. Section 6221.5 continues Section 6221.5 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the

application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6221.5 of Repealed Code

Section 6221.5 was added by 1983 Cal. Stat. ch. 842 § 55 and was amended by 1988 Cal. Stat. ch. 1199 § 76.5. The section continued the last sentence of former Probate Code Section 56.2 (repealed by 1983 Cal. Stat. ch. 842 § 18). The 1988 amendment corrected a cross-reference to another section. As to the 1988 amendment, see Comments to Conforming Revisions and Repeals, 19 Cal. L. Revision Comm'n Reports 1031, 1090 (1988).

§ 6222. Types of statutory wills; contents

6222. (a) There are two California statutory wills:

(1) A California statutory will.

(2) A California statutory will with trust.

(b) Each California statutory will includes all of the following:

(1) The contents of the appropriate California statutory will form, including the notice set out in Section 6240 or 6241.

(2) By reference, the full texts of each of the following:

(A) The definitions and rules of construction set forth in Article 1 (commencing with Section 6200).

(B) The clause set forth in Section 6242.

(c) The property disposition clause adopted by the testator.

(d) The mandatory clauses set forth in Section 6245 and, if applicable, 6246.

Comment. Section 6222 continues Section 6222 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6222 of Repealed Code

Section 6222 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued the substance of former Probate Code Section 56.3 (repealed by 1983 Cal. Stat. ch. 842 § 18).

§ 6223. Selection of more than one or no property disposition clause

6223. If more than one property disposition clause appearing in paragraph 2.3 of a California statutory will form is selected, or if none is selected, the property of a testator who signs a California statutory will shall be distributed to the testator's heirs as if the testator did not make a will.

Comment. Section 6223 continues Section 6223 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6223 of Repealed Code

Section 6223 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued former Probate Code Section 56.4 (repealed by 1983 Cal. Stat. ch. 842 § 18).

§ 6224. Titles of clauses disregarded

6224. Only the texts of the property disposition clauses and the mandatory clauses shall be considered in determining their meaning. Their titles shall be disregarded.

Comment. Section 6224 continues Section 6224 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6224 of Repealed Code

Section 6224 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued former Probate Code Section 56.5 (repealed by 1983 Cal. Stat. ch. 842 § 18).

§ 6225. Revocation or amendment of statutory will

6225. (a) A California statutory will may be revoked and may be amended by codicil in the same manner as other wills.

(b) Any additions to or deletions from the California statutory will on the face of the California statutory will form, other than in accordance with the instructions, are ineffective and shall be disregarded.

Comment. Section 6225 continues Section 6225 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6225 of Repealed Code

Section 6225 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued former Probate Code Section 56.6 (repealed by 1983 Cal. Stat. ch. 842 § 18).

§ 6226. Effect of dissolution or annulment of testator's marriage

6226. (a) If after executing a California statutory will the testator's marriage is dissolved or annulled, the dissolution or annulment revokes any disposition of property made by the will to the former spouse and any nomination of the former spouse as executor, trustee, or guardian made by the will. If any disposition or nomination is revoked solely by this section, it is revived by the testator's remarriage to the former spouse.

(b) In case of revocation by dissolution or annulment:

(1) Property prevented from passing to a former spouse because of the revocation passes as if the former spouse failed to survive the testator.

(2) Provisions nominating the former spouse as executor, trustee, or guardian shall be interpreted as if the former spouse failed to survive the testator.

(c) For purposes of this section, dissolution or annulment means any dissolution or annulment that would exclude the spouse as a surviving spouse within the meaning of Section 78. A decree of legal separation which does not terminate the status of husband and wife is not a dissolution for purposes of this section.

(d) This section applies to any California statutory will, without regard to the time when the will was executed, but this section does not apply to any case where the final judgment of dissolution or annulment of marriage occurs before January 1, 1985; and, if the final judgment of dissolution or annulment of marriage occurs before January 1, 1985, the case is governed by the law that applied prior to January 1, 1985.

Comment. Section 6226 continues Section 6226 of the repealed Probate Code without substantive change.

Background on Section 6226 of Repealed Code

Section 6226 was added by 1983 Cal. Stat. ch. 842 § 55 and was amended by 1984 Cal. Stat. ch. 892 § 36. Section 6226 was a new provision drawn from and consistent with Section 6122. See the Comment to Section 6122. The 1984 amendment revised subdivision (d) so that Section 6226 did not apply to a case where the final judgment of dissolution or annulment of marriage occurred before January 1, 1985. This made Section 6226 consistent with subdivision (f) of Section 6122. See Communication of Law Revision Commission Concerning Assembly Bill 2290, 18 Cal. L. Revision Comm'n Reports 77, 88 (1986). As to the application of any amendments made after that date, see Section 3.

Article 3. Form and Full Text of Clauses

§ 6240. California statutory will form

6240. The following is the California statutory will form:

CALIFORNIA STATUTORY WILL

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. IT MAY BE IN YOUR BEST INTEREST TO CONSULT WITH A CALIFORNIA LAWYER BECAUSE THIS STATUTORY WILL HAS SERIOUS LEGAL EFFECTS ON YOUR FAMILY AND PROPERTY.

2. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS OR YOUR SPOUSE'S SHARE OF COMMUNITY PROPERTY, AND IT WILL NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

3. THIS WILL IS NOT DESIGNED TO REDUCE DEATH TAXES OR ANY OTHER TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.

4. YOU CANNOT CHANGE, DELETE, OR ADD WORDS TO THE FACE OF THIS CALIFORNIA STATUTORY WILL. IF YOU DO, THE CHANGE OR THE DELETED OR ADDED WORDS WILL BE DISREGARDED AND THIS WILL MAY BE GIVEN EFFECT AS IF THE CHANGE, DELETION, OR ADDITION HAD NOT BEEN MADE. YOU MAY REVOKE THIS CALIFORNIA STATUTORY WILL AND YOU MAY AMEND IT BY CODICIL.

5. IF THERE IS ANYTHING IN THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

6. THE FULL TEXT OF THIS CALIFORNIA STATUTORY WILL, THE DEFINITIONS AND RULES OF CONSTRUCTION, THE PROPERTY DISPOSITION CLAUSES, AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF CALIFORNIA.

7. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL. ALL OF THE WITNESSES MUST WATCH YOU SIGN THIS WILL.

8. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

9. THIS WILL TREATS MOST ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

10. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

11. IF YOU HAVE CHILDREN UNDER 21 YEARS OF AGE, YOU MAY WISH TO USE THE CALIFORNIA STATUTORY WILL WITH TRUST OR ANOTHER TYPE OF WILL.

[A printed form for a California statutory will shall set forth the above notice in 10-point boldface type.]

CALIFORNIA STATUTORY WILL OF

_____

(Insert Your Name)

Article 1. Declaration

This is my will and I revoke any prior wills and codicils.

Article 2. Disposition of My Property

2.1. PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings, household items, personal automobiles and personal items to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

2.2. CASH GIFT TO A PERSON OR CHARITY. I make the following cash gift to the person or charity in the amount stated in words and figures in the box which I have completed and signed. If I fail to sign in the box, no gift is made. If the person mentioned does not survive me, or the charity designated does not accept the gift, then no gift is made. No death tax shall be paid from this gift.

FULL NAME OF PERSON OR CHARITY TO RECEIVE CASH GIFT (Name only one. Please print.)	AMOUNT OF GIFT $ _____ AMOUNT WRITTEN OUT: _____ Dollars
	_____ Signature of Testator

2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph 2.3 by writing my signature in the box next to the title of the Property Disposition

Clause I wish to adopt. I sign in only one box. I write the words "not used" in the remaining boxes. If I sign in more than one box or if I fail to sign in any box, the property will be distributed as if I did not make a will.

PROPERTY DISPOSITION CLAUSES (Select one.)

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD. ____

(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD. I LEAVE NOTHING TO MY SPOUSE, IF LIVING. ____

(c) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL. ____

Article 3. Nominations of Executor and Guardian

3.1. EXECUTOR (Name at least one.)

I nominate the person or institution named in the first box of this paragraph 3.1 to serve as executor of this will. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST EXECUTOR. ____

SECOND EXECUTOR. ____

THIRD EXECUTOR. _____

3.2. GUARDIAN (If you have a child under 18 years of age, you should name at least one guardian of the child's person and at least one guardian of the child's property. The guardian of the child's person and the guardian of the child's property may, but need not, be the same. An individual can serve as guardian of either the person or the property, or as guardian of both. An institution can serve only as guardian of the property.)

If a guardian is needed for any child of mine, then I nominate the individual named in the first box of this paragraph 3.2 to serve as guardian of the person of that child, and I nominate the individual or institution named in the second box of this paragraph 3.2 to serve as guardian of the property of that child. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST GUARDIAN OF THE PERSON. _____

FIRST GUARDIAN OF THE PROPERTY. _____

SECOND GUARDIAN OF THE PERSON. _____

SECOND GUARDIAN OF THE PROPERTY. _____

THIRD GUARDIAN OF THE PERSON. _____

THIRD GUARDIAN OF THE PROPERTY. _____ | |

3.3. BOND. My signature in this box means that a bond is not required for any individual named in this will as executor or guardian. If I do not sign in this box, then a bond is required for each of those persons as set forth in the Probate Code. (The bond provides a fund to pay those who do not receive the share of your estate to which they are entitled, including your creditors, because of improper performance of duties by the executor or guardian. Bond premiums are paid out of your estate.)

I sign my name to this California Statutory Will on _____ at _____, _____.
Date City State

_____
Signature of Testator

STATEMENT OF WITNESSES (You must use two adult witnesses and three would be preferable.)

Each of us declares under penalty of perjury under the laws of California that the testator signed this California statutory will in our presence, all of us being present at the same time, and we now, at the testator's request, in the testator's presence, and in the presence of each other, sign below as witnesses, declaring that the testator appears to be of sound mind and under no duress, fraud, or undue influence.

Signature _____ Residence Address: _____
Print Name
Here: _____ _____

Signature _____ Residence Address: _____
Print Name
Here: _____ _____

Signature _____ Residence Address: _____

Comment. Section 6240 continues Section 6240 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6240 of Repealed Code

Section 6240 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued the substance of former Probate Code Section 56.7 (repealed by 1983 Cal. Stat. ch. 842 § 18). The language in parentheses in paragraph 3.3 concerning bond was new.

§ 6241. California statutory will with trust form

6241. The following is the California statutory will with trust form:

CALIFORNIA STATUTORY WILL WITH TRUST

[Text of Will Form Omitted]

Comment. Section 6241 continues Section 6241 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6241 of Repealed Code

Section 6241 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued the substance of former Probate Code Section 56.8 (repealed by 1983 Cal. Stat. ch. 842 § 18). The language in parentheses in paragraph 3.4 concerning bond was new.

§ 6242. Full text of paragraph 2.1 of all California statutory wills

6242. The following is the full text of paragraph 2.1 of both California statutory will forms appearing in this chapter:

If my spouse survives me, I give my spouse all my books, jewelry, clothing, personal automobiles, household furnishings and effects, and other tangible articles of a household or personal use. If my spouse does not survive me, the executor shall distribute those items among my children who survive me, and shall distribute those items in as nearly equal shares as feasible in the executor's discretion. If none of my children survive me, the items described in this paragraph shall become part of the residuary estate.

Comment. Section 6242 continues Section 6242 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the

application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law). See also Sections 230-234 (proceeding to determine survival).

Background on Section 6242 of Repealed Code

Section 6242 was added by 1983 Cal. Stat. ch. 842 § 55. The section was the same as former Probate Code Section 56.9 (repealed by 1983 Cal. Stat. ch. 842 § 18).

§ 6243. Full text of property disposition clauses of California statutory will form

6243. The following are the full texts of the property disposition clauses referred to in paragraph 2.3 of the California statutory will form set forth in Section 6240:

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD.

If my spouse survives me, then I give all my residuary estate to my spouse. If my spouse does not survive me, then I give all my residuary estate to my descendants who survive me.

(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD. I LEAVE NOTHING TO MY SPOUSE, IF LIVING.

I give all my residuary estate to my descendants who survive me. I leave nothing to my spouse, even if my spouse survives me.

(c) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL:

The executor shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of California in effect on the date of my death relating to intestate succession of property not acquired from a predeceased spouse.

Comment. Section 6243 continues Section 6243 of the repealed Probate Code with the addition of language in subdivision (c) that provides for the distribution of the residuary estate according to the laws relating to intestate succession "of property not acquired from a predeceased spouse." This revision restores the substance of the language found in the provision when it was enacted as Probate Code Section 56.10 by 1982 Cal. Stat. ch. 1401, § 1 (later repealed by 1983 Cal. Stat. ch. 842).

Section 6243 applies to every California statutory will, including those executed before January 1, 1985. See Section 6247. As to the application of any amendments made after that date, see Section 3. See also Sections 230-234 (proceeding to determine survival).

Background on Section 6243 of Repealed Code

Section 6243 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued the substance of former Probate Code Section 56.10

(repealed by 1983 Cal. Stat. ch. 842 § 18) except that the provision in the last paragraph of former Section 56.10 adopting the laws relating to the succession of separate property not acquired from a parent, grandparent, or predeceased spouse was replaced by a reference to the law relating to intestate succession. This change permitted community property and quasi-community property to be governed by the intestate succession rules applicable to that property and was based on the assumption that the special provisions relating to succession of property acquired from ancestors would not be continued.

§ 6244. Full text of property disposition clauses of California statutory will with trust form

6244. The following are the full texts of the property disposition clauses referred to in paragraph 2.3 of the California statutory will with trust form set forth in Section 6241:

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE.

(1) If my spouse survives me, then I give all my residuary estate to my spouse.

(2) If my spouse does not survive me and if any child of mine under 21 years of age survives me, then I give all my residuary estate to the trustee, in trust, on the following terms:

(A) As long as any child of mine under 21 years of age is living, the trustee shall distribute from time to time to or for the benefit of any one or more of my children and the descendants of any deceased child (the beneficiaries) of any age as much, or all, of the (i) principal or (ii) net income of the trust, or (iii) both, as the trustee deems necessary for their health, support, maintenance, and education. Any undistributed income shall be accumulated and added to the principal. "Education" includes, but is not limited to, college, graduate, postgraduate, and vocational studies, and reasonably related living expenses. Consistent with the trustee's fiduciary duties, the trustee may distribute trust income or principal in equal or unequal shares and to any one or more of the beneficiaries to the exclusion of other beneficiaries. In deciding on distributions, the trustee may take into account, so far as known to the trustee, the beneficiaries' other income, outside resources, or sources of support, including the

capacity for gainful employment of a beneficiary who has completed his or her education.

(B) The trust shall terminate when there is no living child of mine under 21 years of age. The trustee shall distribute any remaining principal and accumulated net income of the trust to my descendants who are then living.

(3) If my spouse does not survive me and if no child of mine under 21 years of age survives me, then I give all my residuary estate to my descendants who survive me.

(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD IN ONE TRUST TO PROVIDE FOR THEIR SUPPORT AND EDUCATION UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE. I LEAVE NOTHING TO MY SPOUSE, IF LIVING.

(1) I give all my residuary estate to the trustee, in trust, on the following terms:

(A) As long as any child of mine under 21 years of age is living, the trustee shall distribute from time to time to or for the benefit of any one or more of my children and the descendants of any deceased child (the beneficiaries) of any age as much or all, of the (i) principal, or (ii) net income of the trust, or (iii) both, as the trustee deems necessary for their health, support, maintenance, and education. Any undistributed income shall be accumulated and added to the principal. "Education" includes, but is not limited to, college, graduate, postgraduate, and vocational studies, and reasonably related living expenses. Consistent with the trustee's fiduciary duties, the trustee may distribute trust income or principal in equal or unequal shares and to any one or more of the beneficiaries to the exclusion of other beneficiaries. In deciding on distributions, the trustee may take into account, so far as known to the trustee, the beneficiaries' other income, outside resources, or sources of support, including the capacity for gainful employment of a beneficiary who has completed his or her education.

(B) The trust shall terminate when there is no living child of mine under 21 years of age. The trustee shall distribute any remaining principal and accumulated net income of the trust to my descendants who are then living.

(2) If no child of mine under 21 years of age survives me, then I give all my residuary estate to my descendants who survive me.

(3) I leave nothing to my spouse, even if my spouse survives me.

Comment. Section 6244 continues Section 6244 of the repealed Probate Code without change. This section does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law). See also Sections 230-234 (proceeding to determine survival).

Background on Section 6244 of Repealed Code

Section 6244 was added by 1983 Cal. Stat. ch. 842 § 55. The section continued former Probate Code Section 56.11 (repealed by 1983 Cal. Stat. ch. 842 § 18).

§ 6245. Mandatory clauses of all California statutory wills

6245. The mandatory clauses of all California statutory wills are as follows:

(a) INTESTATE DISPOSITION. If the testator has not made an effective disposition of the residuary estate, the executor shall distribute it to the testator's heirs at law, their identities and respective shares to be determined according to the laws of the State of California in effect on the date of the testator's death relating to intestate succession of property not acquired from a predeceased spouse.

(b) POWERS OF EXECUTOR. (1) In addition to any powers now or hereafter conferred upon executors by law, including all powers granted under the Independent Administration of Estates Act, the executor shall have the power to: (A) sell estate assets at public or private sale, for cash or on credit terms, (B) lease estate assets without restriction as to duration, and (C) invest any surplus moneys of the estate in real or personal property, as the executor deems advisable.

(2) The executor may distribute estate assets otherwise distributable to a minor beneficiary to (A) the guardian of the minor's person or estate, (B) any adult person with whom the minor resides and who has the care, custody, or control of the minor, or (C) a custodian, serving on behalf of the minor under the Uniform Gifts to Minors Act of any state or the Uniform Transfers to Minors Act of any state.

The executor is free of liability and is discharged from any further accountability for distributing assets in compliance with the provisions of this paragraph.

(3) On any distribution of assets from the estate, the executor shall have the discretion to partition, allot, and distribute the assets (A) in kind, including undivided interests in an asset or in any part of it, or (B) partly in cash and partly in kind, or (C) entirely in cash. If a distribution is being made to more than one beneficiary, the executor shall have the discretion to distribute assets among them on a pro rata or non-pro rata basis, with the assets valued as of the date of distribution.

(c) POWERS OF GUARDIAN. A guardian of the person nominated in the California statutory will shall have the same authority with respect to the person of the ward as a parent having legal custody of a child would have. A guardian of the estate nominated in a California statutory will shall have all of the powers conferred by law. All powers granted to guardians in this paragraph may be exercised without court authorization.

Comment. Section 6245 continues Section 6245 of the repealed Probate Code with the addition of language in subdivision (a) that provides for the distribution of the residuary estate according to the laws relating to intestate succession "of property not acquired from a predeceased spouse." This revision restores the substance of the language found in the provision when it was enacted as Probate Code Section 56.12 by 1982 Cal. Stat. ch. 1401 § 1 (later repealed by 1983 Cal. Stat. ch. 842).

This section applies to every California statutory will, including those executed before January 1, 1985. See Section 6247. As to the application of any amendments made after that date, see Section 3.

Background on Section 6245 of Repealed Code

Section 6245 was added by 1983 Cal. Stat. ch. 842 § 55 and was amended by 1984 Cal. Stat. ch. 243 § 9.2. The section continued the substance of former Probate Code Section 56.12 (repealed by 1983 Cal. Stat. ch. 842 § 18) except that the provision of the former law adopting the laws relating to the succession of separate property not acquired from a parent, grandparent, or predeceased spouse was replaced by a reference to the law relating to intestate succession. The reason for this change is stated in the Comment to Section 6243. The 1984 amendment added a reference to the Uniform Transfers to Minors Act of any state. See Recommendation Relating to Uniform Transfers to Minors Act, 17 Cal. L. Revision Comm'n Reports 601 (1984). See also Recommendation Relating to Revision of Wills and Intestate Succession Law, 17 Cal. L. Revision Comm'n Reports 537 (1984).

§ 6246. Additional mandatory clauses for California statutory will with trust form

6246. In addition to the mandatory clauses contained in Section 6245, the California statutory will with trust form shall also incorporate the following mandatory clauses:

(a) INEFFECTIVE DISPOSITION. If, at the termination of any trust created in the California statutory will with trust, there is no effective disposition of the remaining trust assets, then the trustee shall distribute those assets to the testator's then living heirs at law, their identities and respective shares to be determined as though the testator had died on the date of the trust's termination and according to the laws of the State of California then in effect relating to intestate succession of property not acquired from a predeceased spouse.

(b) POWERS OF TRUSTEE. (1) In addition to any powers now or hereafter conferred upon trustees by law, the trustee shall have all the powers listed in Article 2 (commencing with Section 16220) of Chapter 2 of Part 4 of Division 9 of the Probate Code. The trustee may exercise those powers without court authorization.

(2) In addition to the powers granted in the foregoing paragraph, the trustee may:

(A) Hire and pay from the trust the fees of investment advisers, accountants, tax advisers, agents, attorneys, and other assistants for the administration of the trust and for the management of any trust asset and for any litigation affecting the trust.

(B) On any distribution of assets from the trust, the trustee shall have the discretion to partition, allot, and distribute the assets (i) in kind, including undivided interests in an asset or in any part of it, or (ii) partly in cash and partly in kind, or (iii) entirely in cash. If a distribution is being made to more than one beneficiary, the trustee shall have the discretion to distribute assets among them on a pro rata or non-pro rata basis, with the assets valued as of the date of distribution.

(C) The trustee may, upon termination of the trust, distribute assets to a custodian for a minor beneficiary under the Uniform Gifts to Minors Act of any state or the Uniform Transfers to Minors Act of any state.

(3) The trustee is free of liability and is discharged from any further accountability for distributing assets in compliance with the provisions of this paragraph.

(c) TRUST ADMINISTRATIVE PROVISIONS. The following provisions

shall apply to any trust created by a California statutory will with trust:

(1) The interests of trust beneficiaries are not transferable by voluntary or involuntary assignment or by operation of law and shall be free from the claims of creditors and from attachment, execution, bankruptcy, or other legal process to the fullest extent permissible by law.

(2) The trustee is entitled to reasonable compensation for ordinary and extraordinary services, and for all services in connection with the complete or partial termination of any trust created by this will.

(3) All persons who have any interest in a trust under a California statutory will with trust are bound by all discretionary determinations the trustee makes in good faith under the authority granted in the California statutory will with trust.

Comment. Section 6246 continues Section 6246 of the repealed Probate Code with the addition of language in subdivision (a) that provides for the distribution of the residuary estate according to the laws relating to intestate succession "of property not acquired from a predeceased spouse." This revision restores the substance of the language found in the provision when it was enacted as Probate Code Section 56.13 by 1982 Cal. Stat. ch. 1401 § 1 (later repealed by 1983 Cal. Stat. ch. 842).

This section applies to every California statutory will, including those executed before January 1, 1985. See Section 6247. As to the application of any amendments made after that date, see Section 3.

Background on Section 6246 of Repealed Code

Section 6246 was added by 1983 Cal. Stat. ch. 842 § 55 and was amended by 1984 Cal. Stat. ch. 243 § 9.3 and 1987 Cal. Stat. ch. 923 § 85.3. The section continued former Probate Code Section 56.13 (repealed by 1983 Cal. Stat. ch. 842 § 18) with technical revisions. The provision of former law adopting the law relating to succession of separate property not acquired from a parent, grandparent, or predeceased spouse was replaced by a reference to the law relating to intestate succession. The reason for this change is stated in the Comment to Section 6243. The 1984 amendment added a reference to the Uniform Transfers to Minors Act of any state. Concerning the 1984 amendment, see Recommendation Relating to Uniform Transfers to Minors Act, 17 Cal. L. Revision Comm'n Reports 601 (1984). See also Recommendation Relating to Revision of Wills and Intestate Succession Law, 17 Cal. L. Revision Comm'n Reports 537 (1984). The 1987 amendment corrected a cross-reference in subdivision (b). As to the 1987 amendment, see Communication from California Law Revision Commission Concerning Assembly Bill 708, 19 Cal. L. Revision Comm'n Reports 545, 559 (1988).

§ 6247. Will includes only texts of clauses as they exist when will executed

6247. (a) Except as specifically provided in this chapter, a California statutory will shall include only the texts of the property disposition clauses and the mandatory clauses as they exist on the day the California statutory will is executed.

(b) Sections 6205, 6206, and 6226, [6243, 6245, and 6246] apply to every California statutory will, including those executed before January 1, 1985. Section 6211 applies to every California statutory will, including those executed before July 1, 1991, except that Section 6211 does not apply if the testator died before July 1, 1991.

(c) Notwithstanding Section 6222 and except as provided in subdivision (b), a California statutory will is governed by the law that applied prior to January 1, 1985, if the California statutory will is executed on or after January 1, 1985, on a form that (1) was prepared for use under former Sections 56 to 56.14, inclusive, repealed by Chapter 842 of the Statutes of 1983, and (2) satisfied the requirements of law that applied prior to January 1, 1985.

(d) A California statutory will does not fail to satisfy the requirement of subdivision (a) merely because the will is executed on a form that incorporates the mandatory clauses of Section 6246 that refer to former Section 1120.2, repealed by Chapter 820 of the Statutes of 1986. If the will incorporates the mandatory clauses with a reference to former Section 1120.2, the trustee has the powers listed in Article 2 (commencing with Section 16220) of Chapter 2 of Part 4 of Division 9.

Comment. Section 6247 as enacted by Chapter 79 of the Statutes of 1990 continued the substance of Section 6247 of the repealed Probate Code with the addition of references in subdivision (b) to Sections 6243, 6245, and 6246. Those sections had been revised in the new Probate Code to restore the substance of the language found in the provisions when they were enacted by 1982 Cal. Stat. ch. 1401, § 1 (later repealed by 1983 Cal. Stat. ch. 842). The amendment to Section 6247 made by SB 1775 inadvertently chaptered out the revision that added the references to Sections 6243, 6245, and 6246 in Section 6247 as enacted by the bill that enacted the new Probate Code.

The 1990 amendment to Section 6247 (made by 1990 Cal. Stat. ch. [SB 1775] § 16) added the second sentence to subdivision (b). See Section 6211 (120-hour survival requirement). For background on the 1990 amendment, see Recommendation Relating to Survival Requirement for Beneficiary of Statutory Will, 20 Cal. L. Revision Comm'n Reports 549 (1990).

Subdivision (c) validates California statutory wills executed on or after January 1, 1985, on a form prepared for use under the prior law; such wills are governed by the prior law except as provided in subdivision (b). Subdivision (d) makes clear that a California statutory will executed on a form which incorporates a reference to former Section 1120.2 of the repealed Probate Code is not invalid for that reason. Section 6247 does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6226(d) (effect of marriage dissolution or annulment on disposition and nomination provisions).

Background on Section 6247 of Repealed Code

Section 6247 was added by 1983 Cal. Stat. ch. 842 § 55 and was amended by 1984 Cal. Stat. ch. 892 § 37 and 1987 Cal. Stat. ch. 923 § 85.7. Subdivision (a) continued the substance of former Probate Code Section 56.14 (repealed by 1983 Cal. Stat. ch. 842 § 18). The 1984 amendment added subdivisions (b) and (c). See Communication of Law Revision Commission Concerning Assembly Bill 2290, 18 Cal. L. Revision Comm'n Reports 77, 88-89 (1986). See also Recommendation Relating to Revision of Wills and Intestate Succession Law, 17 Cal. L. Revision Comm'n Reports 537 (1984). The 1987 amendment added subdivision (d). See Communication from California Law Revision Commission Concerning Assembly Bill 708, 19 Cal. L. Revision Comm'n Reports 545, 559 (1988).

§ 6248. Application of general law

6248. Except as specifically provided in this chapter, the general law of California applies to a California statutory will.

Comment. Section 6248 continues Section 6248 of the repealed Probate Code without change. This section makes clear that, except as provided in this chapter, general law applies to a California statutory will. Section 6248 does not apply if the testator died before January 1, 1985. See Section 6103. As to the application of any amendments made after that date, see Section 3. See also Section 6247 (inclusion of clauses as existing on date of execution of will; statutory will executed on form prepared for use under prior law).

Background on Section 6248 of Repealed Code

Section 6248 was added by 1983 Cal. Stat. ch. 842 § 55 and was amended by 1984 Cal. Stat. ch. 892 § 38. The section was drawn from Section 2 of 1982 Cal. Stat. ch. 1401. The 1984 amendment revised the language of the section to make clear that, except as provided in this chapter, general law applies to a California statutory will. See Recommendation Relating to Revision of Wills and Intestate Succession Law, 17 Cal. L. Revision Comm'n Reports 537 (1984).

DRAFT OF NEW STATUTE

CHAPTER 6.5. CALIFORNIA STATUTORY WILL
(Added to Part 1 of Division 6 of the Probate Code)

Article 1. Definitions and Rules of Construction

§ 6250. Definitions and rules of construction that govern this chapter
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§ 6252. Executor
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§ 6254. Maker
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Article 4. Requirements for Printed Form of California Statutory Will

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CONFORMING AMENDMENTS, ADDITIONS, AND REPEALS

§ 221 (amended). Application of Uniform Simultaneous Death Act
§ 230 (amended). Proceedings to determine survival
§ 6113 (amended). Choice of law as to validity of execution of will
§§ 6200-6248 (repealed) California Statutory Will
§ 6200 (added). Use of form provided by repealed California Statutory Will statute

CHAPTER 6.5. CALIFORNIA STATUTORY WILL
(Added to Part 1 of Division 6 of the Probate Code)

Comment. This chapter provides a new California Statutory Will form that supersedes the form formerly provided by repealed Chapter 6 (commencing with Section 6200). Although the former statute is repealed, forms that complied with its requirements may still be used. See Section 6200.

Article 1. Definitions and Rules of Construction

§ 6250. Definitions and rules of construction that govern this chapter

6250. Unless the provision or context clearly requires otherwise, these definitions and rules of construction govern the construction of this chapter.

Comment. Section 6250 is the same as former Section 6200 (repealed California Statutory Will statute).

§ 6251. Descendants

6251. "Descendants" means children, grandchildren, and their lineal descendants of all generations, with the relationship of parent and child at each generation being determined as provided in California Probate Code Section 6152. A reference to "descendants" in the plural includes a single descendant where the context so requires.

Comment. Section 6251 is the same as former Section 6205 (repealed California Statutory Will statute). This section applies the rules of construction of wills for determining the parent-child relationship. This makes the construction of a California Statutory Will consistent with the construction of wills generally.

§ 6252. Executor

6252. "Executor" means both the person designated as executor in a California Statutory Will and any other person acting at any time as the executor or administrator under a California Statutory Will.

Comment. Section 6252 is the same in substance as former Section 6203 (repealed California Statutory Will statute).

§ 6253. Heirs at law

6253. "Heirs at law" means those persons who would take under California Probate Code Sections 6401 and 6402 if the maker did not have a will.

Comment. Section 6253 is a new provision. The section is consistent with the provisions of the former California Statutory Will statute that provided that property that the will did not otherwise

dispose of is to be taken by those who would take by intestate succession of property not acquired from a predeceased spouse. See former Probate Code Section 6243(c), 6245(a), and 6246(a) (enacted by 1990 Cal. Stat. ch. 79). Section 6402.5 is not applicable to disposition under a California Statutory Will because the California Statutory Will disposition clauses provide that property is to taken by "heirs at law" and that term is defined in Section 6253 to exclude Section 6402.5.

§ 6254. Maker

6254. "Maker" means a person who makes a California Statutory Will.

Comment. Section 6254 supersedes former Section 6201 (repealed California Statutory Will statute) which defined "testator." This chapter use the word "maker" instead of "testator" which was used in the repealed statute. This substitution recognizes a person signing a California Statutory Will may not be familiar with the technical term "testator" but will understand "maker" to mean the person disposing of property using a California Statutory Will.

§ 6255. Person

6255. "Person" includes individuals and institutions.

Comment. Section 6255 is the same as former Section 6210 (repealed California Statutory Will statute).

§ 6256. Spouse

6256. "Spouse" means the maker's husband or wife who is married to the maker both at the time the maker signs the California Statutory Will and at the time the maker dies.

Comment. Section 6256 is the same in substance as former Section 6202 (repealed California Statutory Will statute). The language of the former section has been rephrased to make clear that the spouse must be married to the maker both at the time the will is signed and at the time the maker dies. This language is consistent with the rule stated in Section 6122 (effect of dissolution or annulment of marriage on will)

§ 6257. Manner of distribution to "descendants"

6257. Property to be distributed under a California Statutory Will to a person's descendants, or to "my descendants (my children and the descendants of any deceased child)," shall be divided into as many equal shares as there are (1) living descendants of the nearest degree of living descendants and (2) deceased descendants of that same degree who leave descendants. Each living descendant of the nearest degree shall receive one share. The share of each deceased descendant of that

same degree shall be divided among his or her descendants in the same manner.

Comment. Section 6257 is the same in substance as former Section 6209 (repealed California Statutory Will statute). The rule stated in Section 6257 is consistent with the general rule concerning taking by representation. See Section 240 (representation).

§ 6258. 120-hour survival requirement

6258. A reference in a California Statutory Will to a person who "survives me" or its equivalent means a person who survives the decedent by 120 hours. A person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for the purpose of the California Statutory Will, and the beneficiaries are determined accordingly. If it cannot be established by clear and convincing evidence that a person who would otherwise be a beneficiary has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. The requirement of this section that a person who survives the decedent must survive the decedent by 120 hours does not apply if the application of the 120-hour survival requirement would result in the escheat of property to the state.

Comment. Section 6258 is the same as former Section 6211 (repealed California Statutory Will statute) (enacted by 1990 Cal. Stat. ch. 710 § 15). The section is comparable to Section 6403 (requirement that heir survive decedent by 120 hours). See also Section 230 (petition to determine for the purposes of Section 6258 whether one person survived another).

§ 6259. Masculine pronouns; singular and plural words

6259. Masculine pronouns include the feminine, and plural and singular words include each other, where appropriate.

Comment. Section 6259 is the same as former Section 6207 (repealed California Statutory Will statute).

§ 6260. Use of "shall" or "may" in statutory will

6260. (a) If a California Statutory Will states that a person shall perform an act, the person is required to perform that act.

(b) If a California Statutory Will states that a person may do an act, the person's decision to do or not to do the act shall be made in the exercise of the person's fiduciary powers.

Comment. Section 6260 is the same as former Section 6208 (repealed California Statutory Will statute).

Article 2. General Provisions

§ 6265. Application of general law

6265. Except as specifically provided in this chapter, the general law of California relating to wills applies to a California Statutory Will.

Comment. Section 6265 is the same in substance as former Section 6248 (repealed California Statutory Will statute). The phrase "relating to wills" has been added to the language of former Section 6248. The section makes clear that, except as provided in this chapter, general California law relating to wills applies to a California Statutory Will. Thus, for example, Sections 6100 ("An individual 18 or more years of age who is of sound mind may make a will"), 6110 (manner of execution of will), 6120 (acts constituting revocation), 6122 (effect of dissolution or annulment of marriage on will), 6123 (second will revoking first will, or subsequent will which revokes a prior will or part expressly or by inconsistency), 6124 (presumption of revocation), 6147 (antilapse statute), and 6148 (failed devises) apply to a statutory will. This chapter may, however, provide a special rule that modifies a rule of the general law relating to wills. For example, Section 6270 permits the court to find valid a defectively executed will executed on a California Statutory Will form if the court is satisfied that the maker signed the will and knew and approved of the contents of the will and intended it to have testamentary effect. For another special rule applicable to a California Statutory Will, see Section 6258 (120-hour survival requirement)

§ 6266. Content of California Statutory Will

6266. A California Statutory Will includes all of the following:

(a) The contents of the California Statutory Will form, set out in Section 6275, including the notice and instructions.

(b) By reference, the full texts of each of the following:

(1) The definitions and rules of construction set forth in Article 1 (commencing with Section 6250).

(2) The property disposition clauses adopted by the maker (Sections 6276, 6277, and 6278).

(3) The mandatory clauses set forth in Section 6279.

Comment. Section 6266 is a new provision drawn from former Section 6222 (repealed California Statutory Will statute). See also Sections 6285 and 6286 (material that must be provided when printed form is provided for use by person who does not have the advice of an attorney).

§ 6267. Selection of more than one or no property disposition clause

6267. (a) If more than one of the property disposition choices appearing in paragraph 2 of a California Statutory Will form are selected, or if none of the choices in paragraph 2 is selected, by the maker of a California Statutory Will, the property governed by that paragraph shall become a part of the balance of the maker's estate.

(b) If more than one of the property disposition choices appearing in paragraph 4 of a California Statutory Will form are selected, or if none of the choices in paragraph 4 is selected, by the maker of a California Statutory Will, the property governed by that paragraph shall be distributed to the maker's heirs at law as if the maker did not make a will.

Comment. Section 6267 is drawn from former Section 6223 (repealed California Statutory Will statute). See Section 6253 (defining "heirs at law") and the Comment to that section.

§ 6268. Titles of clauses disregarded

6268. Only the texts of the property disposition clauses and the mandatory clauses shall be considered in determining their meaning. Their titles shall be disregarded.

Comment. Section 6268 is the same as former Section 6224 (repealed California Statutory Will statute).

Note. Is Section 6268 necessary?

§ 6269. Additions or deletions made on face of will

6269. Where an addition to or deletion from the California Statutory Will is made on the face of the California Statutory Will form, other than in accordance with the instructions, the addition or deletion shall be given effect only where that would effectuate the clear intent of the maker. If the intent is unclear, the court either may determine that the addition or deletion is ineffective and shall be disregarded or may determine that all or a portion of the California Statutory Will is invalid, whichever is more likely to be consistent with the intent of the maker.

Comment. Section 6269 supersedes subdivision (b) of former Section 6225 (repealed California Statutory Will statute) which provided that an addition to or deletion from the California Statutory Will on the face of the California Statutory Will form, other than in accordance with the instructions, is ineffective and shall be

disregarded. Section 6269 gives effect to the maker's testamentary intent where the intent is clear. Thus, the court will give effect to the will with the addition or deletion where that is consistent with the clear intent of the maker. Or the court may ignore the addition or deletion, or may find all or a portion of the will invalid, whichever is more likely to be consistent with the intent of the maker.

§ 6270 Validity of will where lack of full compliance with execution requirements

6270. Notwithstanding Sections 6110, a document executed on a California Statutory Will form provided by Section 6275 is valid as a will if all of the following requirements are satisfied:

(a) The form is signed by the maker.

(b) The court is satisfied that the maker knew and approved of the contents of the will and intended it to have testamentary effect.

(c) The testamentary intent of the maker as reflected in the document is clear.

Comment. Section 6270 is a new provision. Since the great majority of statutory wills are executed by persons who do not have the advice of legal counsel, it is important that some provision be made to save statutory wills that otherwise would be invalid because of the failure to comply with the technical execution requirements. Under Section 6270, the court may find a California Statutory Will form to be a valid will even though the form was not executed with the formalities required by Section 6110. For example, the witnesses might not be "present at the same time" to witness the signing of the will, or one of the witnesses to the will may not be competent to be a witness (see Section 6112), or there may be only one or no witnesses to the will.

Article 3. Form and Full Text of Clauses

§ 6275. California Statutory Will form

6275. The following is the California Statutory Will form:

CALIFORNIA STATUTORY WILL

NOTICE

1. **Any person age 18 or over and of sound mind may sign a will.**
2. **There are several kinds of wills. If you choose to complete this form, you will have a California Statutory Will. If this will does not meet you wishes in any way, you should talk with a lawyer before using this form.**
3. **The full text of statutory provisions (Definitions and Rules of Construction, the Property Disposition Clauses, and the Mandatory Clauses) that apply to this California Statutory Will are contained in the California Probate Code and a copy is attached to this form.**
4. **This will has no effect on jointly-held property, on retirement plan benefits, or on life insurance on your life if you have named a beneficiary who survives you.**
5. **This will is not designed to reduce taxes. You may want to discuss the taxes with a tax advisor.**
6. **This will treats adopted children the same as natural children. You should talk to a lawyer if you have step-children or foster children you have not adopted or if you have children born when you were not married.**
7. **You should keep this will in your safe deposit box or other safe place. You should tell your family where the will is kept.**
8. **You may revoke this will, and you may change it by making and signing a new will. If you marry or divorce after you sign this will, you should make and sign a new will.**

The Questions and Answers sheets attached to this form contain additional information to help you understand about wills and to help you to decide if this California Statutory Will form meets your needs. You should read the Questions and Answers before you use this form.

INSTRUCTIONS

1. **Read the entire will form carefully before you begin filling in the blanks. If there is anything you do not understand, you should ask a lawyer to explain it to you.**
2. **Complete the blanks on the will form. Follow the instructions on the form carefully. Warning! Do not add or cross out any words on the form (except for filling in the blanks) because all or part of this will may not be valid if you do so.**
3. **Date and sign the will and have two witnesses sign it. You and the witnesses must read and follow the witnessing procedure described at the end of this will.**

CALIFORNIA STATUTORY WILL OF

(Print Your Full Name.)

1. **Will.** This is my will. I revoke all prior wills and codicils.

2. **Household and Personal Items.** Except for the particular items listed in paragraph 3 below, I give all my furniture, furnishings, household items, clothing, jewelry, automobiles and personal items as provided below. **(Select one choice only by signing in the appropriate box.)**

a. **Choice One**: If my spouse survives me, to my spouse; otherwise to my descendants (my children and the descendants of any deceased child).

b. **Choice Two**: Nothing to my spouse (if I am married); all to my descendants (my children and the descendants of any deceased child).

c. **Choice Three**: All to the following person:

_____

d. **Choice Four**: Equally among the following persons: **(Insert each person's name.)**

_____

_____

_____

_____

3. **Gifts of Cash or of Particular Personal Property or Real Estate. (Optional.)** I make the following gifts of cash or of the property described, and I sign my name in the box after each gift. If I don't sign in the box, I do not make a gift. No death tax shall be paid from these gifts. **(Sign after each gift.)**

Full Name of Person or Charity to Receive Gift (Name only one. Please Print.)	**Amount of Cash Gift or Description of Property**	**Sign Your Name In This Box for This Gift**

Full Name of Person or Charity to Receive Gift (Name only one. Please Print.)	**Amount of Cash Gift or Description of Property**	**Sign Your Name In This Box for This Gift**

Full Name of Person or Charity to Receive Gift (Name only one. Please Print.)	Amount of Cash Gift or Description of Property	Sign Your Name In This Box for This Gift

Full Name of Person or Charity to Receive Gift (Name only one. Please Print.)	Amount of Cash Gift or Description of Property	Sign Your Name In This Box for This Gift

Full Name of Person or Charity to Receive Gift (Name only one. Please Print.)	Amount of Cash Gift or Description of Property	Sign Your Name In This Box for This Gift

4. **Balance of My Property.** I give the balance of my property as provided below. **(Select <u>one</u> choice only by signing in the appropriate box.)** If I sign in more than one box or if I don't sign in any box, the court will distribute this property to my heirs at law as if I did not make a will.

a. **Choice One**: If my spouse survives me, to my spouse; otherwise to my descendants (my children and the descendants of any deceased child). ☐

b. **Choice Two**: Nothing to my spouse (if I am married); all to my descendants (my children and the descendants of any deceased child). ☐

c. **Choice Three**: Equally among the following persons: **(Insert each person's name.)** ☐

_____

_____

_____

_____

d. **Choice Four**: To those heirs at law designated under California law as if I did not have a will.

5. **Guardian**. If I have a child under age 18 and the child does not have a living parent at my death, I nominate the following persons to serve in the order designated as guardian of each of my children who requires one: **(An individual can serve as Guardian of the Person, or Guardian of the Property, or of both. A corporation can serve only as Guardian of the Property.)**

Name of First Guardian of the Person
Name of Second Guardian of the Person
Name of Third Guardian of the Person

Name of First Guardian of the Property
Name of Second Guardian of the Property
Name of Third Guardian of the Property

6. **Executor**. I nominate the following individuals or corporations to serve in the order designated as executor: **(You may name one, two or three individuals or corporations to serve consecutively; if you don't name any, the court will appoint one for you.)**

Name of First Executor To Serve
Name of Second Executor To Serve
Name of Third Executor To Serve

7. **Bond**. My signature in this box means a bond is not required for any person named as executor or guardian. A bond will be required if I do not sign in this box. **(Your estate must pay for the bond if one is required.)**

No bond shall be required. | |

(Notice: you must sign this will in the presence of two (2) adult witnesses. The witnesses must sign their names in your presence and in each other's presence. You must first read to them the following two sentences.)

This is my will. I ask the persons who sign below to be my witnesses.

Signed on _____ at _____ , California.

(Date) (City)

Signature of Maker of Will

(NOTICE TO WITNESSES: Two (2) adults must sign as witnesses. Each witness must read the following clause before signing. The witnesses should not receive property under this will).

Each of us declares under penalty of perjury under the laws of the State of California that the following is true and correct:

(i) on the date written below the maker of this will declared to us that this instrument was the maker's will and requested us to act as witnesses to it;

(ii) we understand this is the maker's will;

(iii) the maker signed this will in our presence, all of us being present at the same time;

(iv) we now, at the maker's request, and in the maker's and each other's presence, sign below as witnesses;

(v) we believe the maker is of sound mind and memory;

(vi) we believe that this will was not procured by duress, menace, fraud, or undue influence;

(vii) the maker is age 18 or older; and

(viii) each of us is now age 18 or older, is a competent witness, and resides at the address set forth after his or her name.

Dated: _____ , 19 __

Signature

Signature of Witness

Residence Address: _____

Print Name Here: _____ _____

Signature

Signature of Witness

Residence Address: _____

Print Name Here: _____ _____

AT LEAST TWO WITNESSES MUST SIGN

A NOTARY IS NOT REQUIRED OR SUFFICIENT

Comment. Section 6275 supersedes former Section 6240 (repealed California Statutory Will statute). However, forms that comply with the requirements of the former statute may continue to be used. See Section 6200.

§ 6276. Full text of clauses concerning disposition of household and personal items

6276. The following are the full texts of paragraphs 2a to 2d, inclusive, of the California Statutory Will:

(a) Paragraph 2a (Choice One): If I am married and my spouse survives me, I give my spouse all my books, jewelry, clothing, automobiles, household furnishings and effects, and other tangible articles of a household or personal use. If my spouse does not survive me, I give these items to my descendants. If none of my descendants survives me, these items shall become part of the balance of my estate.

(b) Paragraph 2b (Choice Two): I give all my books, jewelry, clothing, automobiles, household furnishings and effects, and other tangible articles of a household or personal use to my descendants. If none of my descendants survives me, these items shall become part of the balance of my estate.

(c) Paragraph 2c (Choice Three): I give all my books, jewelry, clothing, automobiles, household furnishings and effects, and other tangible articles of a household or personal use to the person named below.

(d) Paragraph 2d (Choice Four): I give all my books, jewelry, clothing, automobiles, household furnishings and effects, and other tangible articles of a household or personal use to the persons named below, to be divided among them in as nearly equal shares as practical in my executor's discretion.

Comment. Section 6276 is a new provision that sets out the full text of the choices provided in paragraph 2 of the California Statutory Will form (Section 6275). See also Sections 6147 (antilapse statute), 6148 (failed devises).

§ 6277. Full text of clauses concerning disposition of balance of assets

6277. The following are the full texts of paragraphs 4a to 4d, inclusive, of the California Statutory Will:

(a) Paragraph 4a (Choice One): If I am married and my spouse survives me, I give my spouse the balance of my estate. If my spouse does not survive me, I give the balance to my descendants. If none of my descendants survives me, I give the balance to my heirs at law.

(b) Paragraph 4b (Choice Two): I give the balance of my estate to my descendants. If none of my descendants survives me, I give the balance to my heirs at law.

(c) Paragraph 4c (Choice Three): I give the balance of my estate to the persons named below, to be divided among them in equal shares.

(d) Paragraph 4d (Choice Four): I give the balance of my estate to my heirs at law.

Comment. Section 6277 is a new provision that sets out the full text of the choices provided in paragraph 4 of the California Statutory Will form (Section 6275). See also Section 6253 (meaning of "heirs at law").

§ 6279. Full Text of mandatory clauses

6279. The mandatory clauses of the California Statutory Will are as follows:

(a) INTESTATE DISPOSITION. If I have not made an effective disposition of the balance of my estate, the executor shall distribute it to my heirs at law.

(b) EXECUTOR'S POWERS.

(1) The executor has all powers now or later conferred upon executors by California law. This includes all powers granted under the Independent Administration of Estates Act. This also includes the power to: (A) sell estate assets at public or private sale with or without notice, for cash or on credit terms, (B) lease estate assets without restriction as to duration, and (C) invest any surplus moneys of the estate in real or personal property, as the executor deems advisable.

(2) The executor may distribute estate assets otherwise distributable to a minor beneficiary to (A) the guardian of the minor's person or estate, (B) any adult person with whom the minor resides and who has the care, custody, or control of the minor, or (C) a custodian for the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with section 3900), or any other state's Uniform Transfers to Minors Act or Uniform Gifts to Minors Act. The executor

may distribute estate property otherwise distributable to a beneficiary under age 25 to a custodian under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900), in which case the executor shall provide, in making the transfer to the custodian pursuant to Section 3909, that the time for the transfer to the beneficiary of the custodial property so transferred is delayed until the time the beneficiary attains 25 years of age, except that the executor shall have discretion to provide in the transfer to the custodian that the time for the transfer to the beneficiary shall be delayed only to an earlier time not earlier than the time the beneficiary attains the age of 18 years. The executor is free of liability and is discharged from any further accountability for distributing assets pursuant to this paragraph.

(3) On any distribution of assets from the estate, the executor shall have the discretion to partition, allot, and distribute the assets (A) in kind, including undivided interests in an asset or in any part of it, or (B) partly in cash and partly in kind, or (C) entirely in cash. If a distribution is made to more than one beneficiary, the executor shall have the discretion to distribute assets among them on a pro rata or non-pro rata basis, with the assets valued as of the date of distribution.

(c) GUARDIAN'S POWERS. A guardian of the person nominated in the California Statutory Will has the same authority with respect to the person of the ward as a parent having legal custody of a child would have. A guardian of the estate nominated in the California Statutory Will has all of the powers conferred by California law. All powers granted to guardians in this paragraph may be exercised without court authorization.

Comment. Section 6279 is a new provision that sets out the full text of the mandatory clauses of the California Statutory Will form (Section 6275). See also Section 6253 (meaning of "heirs at law"). The second sentence of subdivision (b)(2) was not found in former law.

Article 4. Requirements for Printed Form of California Statutory Will

§ 6285. Requirements for printed form

6285. (a) A printed form of a California Statutory Will under this chapter that is sold or otherwise distributed for use by a person who does not have the advice of legal counsel shall set out the following the order indicated:

(1) The full text of the California Statutory Will form as prescribed in Section 6275, including the Notice and Instructions.

(2) The full text of the definitions and rules of construction set forth in Sections 6251 to 6259, inclusive.

(3) Sections 6276, 6277, 6278, and 6279.

(4) The information set out in Section 6286. This information is not a part of the California Statutory Will.

(b) The portion of the material described in subdivision (a) that is set out in all capital letters in this chapter shall be printed in bold face type in the printed form.

Comment. Section 6285 is new.

§ 6286. Information to be attached to printed form

6286. A printed form of a California Statutory Will under this chapter that is sold or otherwise distributed for use by a person who does not have the advice of legal counsel shall have the following information attached to the printed form:

QUESTIONS AND ANSWERS ABOUT THIS CALIFORNIA STATUTORY WILL

The following information, in question and answer form, is NOT a part of the California Statutory Will. It is designed to help you understand about wills and to decide if this will meets your needs.

1. WHAT HAPPENS IF I DIE WITHOUT A WILL? If you die without a will, what you own (your "assets") in your name alone will be divided among your spouse, children, or other relatives according to state law. The court will appoint a relative to collect and distribute your assets.

2. WHAT CAN A WILL DO FOR ME? In a will you can designate who will receive your assets at your death. You can designate someone (called an "executor") to appear before the court, collect your assets, pay your debts and taxes, and distribute your assets as you specify. You can nominate a guardian to raise your children who are under age 18. You can nominate a guardian to manage assets for your children until they reach age 18, or you can designate someone to manage the assets for your children until they reach age 25.

3. DOES A WILL AVOID PROBATE? No. Whether or not you die with a will, assets in your name alone usually go through the court probate process. The court's first job is to determine if your will is valid.

4. WHAT IS COMMUNITY PROPERTY? CAN I GIVE AWAY MY SHARE IN MY WILL? If you are married and you or your spouse earned money during your marriage from work and wages, that money (and the assets bought with it) is community property. You will can only give away your one-half of community property. Your will cannot give away your spouse's one-half of community property.

5. DOES MY WILL GIVE AWAY ALL OF MY ASSETS? DO ALL ASSETS GO THROUGH PROBATE? No. Money in a joint tenancy bank account automatically belongs to the other named owner without probate. If your spouse or child is on the deed to your house as a joint tenant, the house automatically passes to him or her. Life insurance and retirement plan benefits may pass directly to the named beneficiary. A will does NOT necessarily control how these types of "non-probate" assets pass at your death.

6. ARE THERE DIFFERENT KINDS OF WILLS? Yes. There are handwritten wills, typewritten wills, attorney-prepared wills and statutory wills. All are valid if done precisely as the law requires. You should see a lawyer if you do not want to use this statutory will or if you do not understand this form.

7. WHO MAY USE THIS WILL? This will is based on California law. It is designed for only California residents. You may use this form if your are single, married, or divorced. You must be age 18 or older and of sound mind.

8. ARE THERE ANY REASONS WHY I SHOULD NOT USE THIS STATUTORY WILL? Yes. This is a simple will. It is NOT designed to reduce death or any other taxes. Talk to a lawyer to do tax planning, particularly if (i) your assets will be worth more than $600,000 at your death, or (ii) you own business related assets, or (iii) you want to create a trust fund for your children's education or other purposes, or (iv) you own assets in some other state, or (v) you want to disinherit your spouse or descendants, or (vi) you have valuable interests in pension or profit sharing plans. You should talk to a lawyer who knows about estate planning if this will does not meet your needs. This will treats most adopted children like natural children. You should talk to a lawyer if you have step-children or foster children whom you have not adopted or if you have children born while you were not married.

9. MAY I ADD OR CROSS OUT ANY WORDS ON THIS WILL? No. If you do, the will may be invalid. You may only fill in the blanks. You may amend this will by a separate document (called a codicil). Talk to a lawyer if you want to do something with your assets which is not allowed in this form.

10. MAY I CHANGE MY WILL? Yes. A will is not effective until you die. You may make and sign a new will. You may change your will at any time, but only by an amendment (called a codicil). You can give away or sell your assets before your death. Your will only affects what you own at death.

11. WHERE SHOULD I KEEP MY WILL? After you and the witnesses sign the will, keep your will in your safe deposit box or other safe place. You should tell trusted family members where your will is kept.

12. WHEN SHOULD I CHANGE MY WILL? You should make and sign a new will if you marry or divorce after you sign this will. Divorce (dissolution of marriage) or annulment automatically cancels (a) all property stated to pass to a former husband or wife under this will, and (b) designation of a former spouse as executor or guardian. You should sign a new will when you have more children, or if your spouse or a child dies. You may want to change your will if there is a large change in the value of your assets.

13. WHAT CAN I DO IF I DO NOT UNDERSTAND SOMETHING IN THIS WILL? If there is anything in this will you do not understand, ask a lawyer to explain it to you.

14. WHAT IS AN EXECUTOR? An "executor" is the person you name to collect your assets, pay your debts and taxes, and distribute your assets as the court directs. It may be a person or it may be a qualified bank or corporation.

15. WHAT IS A GUARDIAN? DO I NEED TO DESIGNATE ONE? If you have children under age 18, you should designate a guardian of their "persons" to raise them. You may also want to designate guardian of their "estates" to manage their assets for them until they reach age 18. At age 18, they receive their assets outright. However, this will permits your executor to transfer the assets to a "custodian" and to direct that the custodian hold the assets until your children reach a higher age, but not later than the time they reach age 25.

16. SHOULD I REQUIRE A BOND? You may require that a guardian or executor provide a "bond". A bond is a form of insurance to replace assets that may be mismanaged or stolen by the guardian or executor. The cost of the bond is paid from the assets of your estate.

18. WHAT IS A TRUST? A trust is a long-term arrangement where a manager (called a "trustee") invests and manages assets for someone (called a "beneficiary") who may be young, or immature, or elderly, or who has a problem or disability. A trust may be created in a will or outside of a will. The trustee invests and manages the assets for the beneficiary under the terms you specify. Trusts are too complicated to be used in this simple will. You should see a lawyer if you want to establish a trust.

19. SHOULD I ASK PEOPLE IF THEY ARE WILLING TO SERVE BEFORE I DESIGNATE THEM AS AN EXECUTOR OR GUARDIAN OR CUSTODIAN? Probably yes. Some people and entities may NOT consent to serve or may not be qualified to act.

Comment. Section 6286 is new.

CONFORMING AMENDMENTS, ADDITIONS, AND REPEALS

§ 221 (amended). Application of Uniform Simultaneous Death Act

SEC. Section 221 of the Probate Code, as enacted by Chapter 79 of the Statutes of 1990, is amended to read:

221. (a) This chapter does not apply in any case where Section 103, 6146, ~~6211~~ 6258, or 6403 applies.

(b) This chapter does not apply in the case of a trust, deed, or contract of insurance, or any other situation, where (1) provision is made dealing explicitly with simultaneous deaths or deaths in a common disaster or otherwise providing for distribution of property different from the provisions of this chapter or (2) provision is made requiring one person to survive another for a stated period in order to take property or providing for a presumption as to survivorship that results in a distribution of property different from that provided by this chapter.

Comment. Section 221 is amended to substitute a reference to Section 6258 for the former reference to Section 6211. Section 6258 replaced former Section 6211.

§ 230 (amended). Proceedings to determine survival

SEC. . Section 230 of the Probate Code, as enacted by Chapter 79 of the Statutes of 1990, is amended to read:

230. A petition may be filed under this chapter for any one or more of the following purposes:

(a) To determine for the purposes of Section 103, 220, 222, 223, 224, 6146, 6147, ~~6211, 6242, 6243, 6344,~~ 6258, 6276, 6277, or 6403, or other provision of this code whether one person survived another.

(b) To determine for the purposes of Section 1389.4 of the Civil Code whether issue of an appointee survived the donee.

(c) To determine for the purposes of Section 24606 of the Education Code whether a person has survived in order to receive benefits payable under the system.

(d) To determine for the purposes of Section 21371 of the Government Code whether a person has survived in order to receive money payable under the system.

(e) To determine for the purposes of a case governed by former Sections 296 to 296.8, inclusive, repealed by Chapter 842 of the Statutes of 1983, whether persons have died other than simultaneously.

Comment. Section 230 is amended to substitute a reference to Sections 6258, 6276, and 6277 for the former reference to Sections 6211, 6242, 6243, and 6244. The substitution reflects the repeal of the old California Statutory Will statute and the enactment of a new California Statutory Will statute. See Section 6200 (repealed California Statutory Will statute) and Sections 6250-6286 (new California Statutory Will statute).

§ 6113 (amended). Choice of law as to validity of execution of will

SEC. . Section 6113 of the Probate Code, as enacted by Chapter 79 of the Statutes of 1990, is amended to read:

6113. A written will is valid if its execution complies with any of the following:

(a) The will is executed in compliance with Section 6110 or 6111 or ~~Chapter 6 (commencing with Section 6200)~~ Chapter 6.5 (commencing with Section 6250) or Chapter 11 (commencing with Section 6380).

(b) The execution of the will complies with the law at the time of execution of the place where the will is executed.

(c) The execution of the will complies with the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.

Comment. Section 6113 is amended to substitute a reference to Chapter 6.5 (commencing with Section 6250) for the former reference to Chapter 6 (commencing with Section 6200). Chapter 6.5 replaced Chapter 6. See also Sections 6200 (forms provided by former Chapter 6 may continue to be used after its repeal and are as valid as if former Chapter 6 had not been repealed) and 6270 (validity of statutory will where lack of full compliance with execution requirements).

§§ 6200-6248 (repealed) California Statutory Will

SEC. Chapter 6 (commencing with Section 6200) of Part 1 of Division 6 of the Probate Code enacted by Chapter 79 of the Statutes of 1990 is repealed.

Comment. Chapter 6 (commencing with Section 6200) is superseded by the new California Statutory Will statute (Sections 6250-6286). However, a form that complied with the repealed chapter may continue to be used after the repeal takes effect. See Section 6200 (added by the act that repealed former Chapter 6) and the Comment to that section.

§ 6200 (added). Use of form provided by repealed California Statutory Will statute

SEC. . Chapter 6 (commencing with Section 6200) is added to Part

1 of Division 6 of the Probate Code enacted by Chapter 79 of the Statutes of 1990, to read:

6200. A California Statutory Will executed before, on, or after the repeal of Chapter 6 (commencing with Section 6200) by the act that enacted this section, using a form that complied with the requirements of that chapter, including Section 6247 of that chapter, is as valid as if Chapter 6 (commencing with Section 6200) had not been repealed by, and Sections 221, 230, and 6113 amended by, the act that enacted this section.

Comment. Section 6200 permits continued use of the form provided by the former statute, even when used after the repeal of the former statute. See also former Section 6247. Accordingly, after the repeal of the provisions formerly found in this chapter takes effect, either the form set forth in former Section 6240 or 6241, to the extent permitted under former Section 6247, may continue to be used. This avoids the need to discard existing printed forms and protects the unwary person who uses a printed form prepared pursuant to the former provisions of this chapter. However, it is anticipated that the new form provided by Chapter 6.5 (commencing with Section 6250) will soon replace the older forms. Section 6200 is drawn from Civil Code Section 2450 (use of statutory short form power of attorney provided in repealed statute).

PROVISIONS OF EXISTING STATUTE THAT ARE NOT CONTINUED

§ 6201 (not continued). Testator

6201. "Testator" means a person choosing to adopt a California statutory will.

Comment. Section 6201 is omitted as unnecessary. The word "testator" is no longer used in the California Statutory Will form or in the statute. The word "maker" (defined in Section 6256) is used in place of the word "testator."

§ 6204 (not continued). Trustee

6204. "Trustee" means both the person so designated in a California statutory will and any other person acting at any time as the trustee under a California statutory will.

Comment. Section 6204 is omitted as unnecessary. The word is no longer used in the California Statutory Will form. The former statutory form that provided for a trust has not been continued.

§ 6206 (not continued). References to Uniform Gifts to Minors Act

6206. A reference in a California statutory will to the "Uniform Gifts to Minors Act of any state" includes both the Uniform Gifts to Minors Act of any state and the Uniform Transfers to Minors Act of any state.

Comment. Section 6206 has been omitted as unnecessary in view of Section 6279(b)(2).

§ 6220 (not continued). Persons who may execute statutory will

6220. Any individual of sound mind and over the age of 18 may execute a California statutory will under the provisions of this chapter.

Comment. Section 6220 has been omitted as unnecessary in view of Section 6265 (general law applicable to wills applies to statutory will). Also, the language of Section 6220, which requires the individual to be "over" the age of 18 to "execute" the will, differs without reason from the language used in Section 6110 (the provision governing wills generally) which permits an individual "18 or more years of age" to "make" a will.

§ 6221 (not continued). Execution procedure

6221. A California statutory will shall be executed only as

follows:

(a) The testator shall complete the appropriate blanks and shall sign the will.

(b) Each witness shall observe the testator's signing and each witness shall sign his or her name in the presence of the testator.

Comment. Section 6221 has been omitted as unnecessary in view of Section 6265 (general law applicable to wills applies to statutory will). See Section 6110 (manner of execution of will). The California Statutory Will form itself contains instructions for completing the form. See also Sections 6267 (selection of more than one or no property disposition clause). 6269 (additions or deletions made on face of will) 6270 (validity of will where lack of full compliance with execution requirements).

§ 6221.5 (not continued). Execution of attestation clause

6221.5. The execution of the attestation clause provided in the California statutory will by two or more witnesses satisfies Section 8220.

Comment. Section 6221.5 has been omitted as unnecessary in view of Section 6265 (general law applicable to wills applies to statutory will). See Section 6110 (manner of execution of will). See also the self-proving attestation clause that is a part of the California Statutory Will form provided by Section 6275.

§ 6226 (not continued). Effect of dissolution or annulment of testator's marriage

6226. (a) If after executing a California statutory will the testator's marriage is dissolved or annulled, the dissolution or annulment revokes any disposition of property made by the will to the former spouse and any nomination of the former spouse as executor, trustee, or guardian made by the will. If any disposition or nomination is revoked solely by this section, it is revived by the testator's remarriage to the former spouse.

(b) In case of revocation by dissolution or annulment:

(1) Property prevented from passing to a former spouse because of the revocation passes as if the former spouse failed to survive the testator.

(2) Provisions nominating the former spouse as executor, trustee, or guardian shall be interpreted as if the former spouse failed to survive the testator.

(c) For purposes of this section, dissolution or annulment means any dissolution or annulment that would exclude the spouse as a surviving spouse within the meaning of Section 78. A decree of legal separation which does not terminate the status of husband and wife is not a dissolution for purposes of this section.

(d) This section applies to any California statutory will, without regard to the time when the will was executed, but this section does not apply to any case where the final judgment of dissolution or annulment of marriage occurs before January 1, 1985; and, if the final judgment of dissolution or annulment of marriage occurs before January 1, 1985, the case is governed by the law that applied prior to January 1, 1985.

Comment. Section 6226 has been omitted as unnecessary in view of Section 6265 (general law applicable to wills applies to statutory will). See also Section 6258 (definition of "spouse"), 6122 (effect of dissolution or annulment of testator's marriage).

Other Omitted Provisions

The statutory form for a California Statutory Will With Trust is omitted, since this option is not to be available under the new scheme. Also omitted are the full text of the clauses relating to the California Statutory Will With Trust.

EXTRACT FROM

Report on the Making and Revocation of Wills

Law Reform Commission of British Columbia (1981), pages 40-54

(b) Substantial Compliance

Current law requires the formalities stipulated by the *Wills Act* for the execution of wills to be strictly followed. Failure to observe the formalities stipulated by that Act renders a will invalid even if the mistake was entirely harmless. Our courts have taken this strict approach for two reasons. First, the testator is dead and cannot assist in ascertaining the validity of the will. Second, even if the will is declared invalid, on the resulting intestacy a distribution is provided for under the *Estate Administration Act*.

The 1974 English case of *Re Beadle*[84] is an example of a document to which probate was refused on the sole ground that it failed to meet the requisite formalities. The testatrix had dictated her wishes to a friend, who transcribed them onto one piece of paper. The testatrix then signed the top corner of the paper and the husband of her friend signed as a witness. The purported will was placed in an envelope and both acquaintances signed the envelope. R.W. Goff, J. held that although there was no doubt at all that the paper contained the testatrix's true testamentary wishes, and that she fully understood its effect, probate of the will had to be refused on a strict interpretation of the statute and the authorities.

Responses to the strict compliance rules have taken at least three different forms, as legislatures, the courts, and law reform advocates have suggested methods to prevent the harsh results which come from the strict application of formal requirements. Soon after the introduction in 1837 of the provision which required that a will be signed at its "end," Parliament relaxed it. This was accomplished by deeming a will to be signed at its foot or end even though it was signed in any one of a number of different places.[85] This modification is part of the *Wills Act* of this Province.[86]

The judicial response has been to uphold the rule on the one hand, and on the other to be permissive in allowing various activities to meet the requirements of the statute. For example, even the slightest of "indications" by an ill testator has been held to constitute an acknowledgement of his signature permitting witnesses to attest. In another case the term "presence" was extended to include a testator who did not see the witnesses sign the will but could have done so if he had cared to look.

Courts have also had to rule on the validity of a will where the parties have used the proper procedure but have executed the wrong documents. For example, spouses occasionally sign each other's will by accident. If the mistake is not noticed until after the death of one spouse, then the court is faced with three options. It may refuse to admit the will to probate, admit part of the spouse's will to probate, deleting references to that spouse, or admit the executed will to probate and correct the document by inserting the proper

[84] *Supra* n. 38.
[85] The *Wills Act Amendment Act*, 1852 15 Vict. c. 24.
[86] *Wills Act*, R.S.B.C. 1979, c. 434, s. 6.

names. Courts in all of the western Canadian provinces have chosen the third option and have rectified and replaced the wording contained in the will.[87]

Thirdly, advocates of law reform have recently criticized the rule requiring strict compliance with the *Wills Act, 1837*. In the United Kingdom the Law Reform Committee has suggested that attacks on form may have ulterior motives:[88]

> A further relevant point is that it seems that the validity of wills in general, and of their attestation in particular, is often challenged for reasons which have no connection with the question whether the will represents the testator's true intentions. In other words, the challenger is not concerned to give effect to what the testator wanted; he dislikes the provisions of the will—no doubt because it deprives him of benefits which he would have had under an earlier will or under the rule of intestate succession—and wants to upset it by any means that lie to hand. It has been suggested that the present attestation rules lend themselves to behaviour of this kind.

In the United States several writers have suggested that a will which does not conform with the formalities of the *Wills Act* might still be validated. For example, one commentator has concluded:[89]

> That some forms of expression are *prima facie* valid does not, however, require that all other forms of expression be held invalid. Even though many other forms of testamentary transfer are presently allowed under trust, contract, or other theory, many indications of testamentary intent, not articulated in traditional legal forms, are denied validity solely because of their failure to meet the formal requirements of a will, notwithstanding total absence of question as to their being true expressions of testamentary desire. Many of these expressions it is suggested, could reasonably be validated, so long as the basic elements of a valid testament—testamentary intent, dispositive scheme, and lack of influence—could be proved by clear and convincing evidence.

In a 1975 article which has attracted much attention, another American scholar, John Langbein, called for the introduction of the doctrine of "substantial compliance" to the law of wills. Professor Langbein has expressed the view that:[90]

> The rule of literal compliance with the Wills Act is a snare for the ignorant and the ill-advised, a needless hangover from a time when the law of proof was in its infancy. In the three centuries since the first *Wills Act* we have developed the means to adjudicate whether formal defects are harmless to the statutory purpose. We are reminded "that legal technicality is a disease, not of the old age, but of the infancy of societies." The rule of literal compliance has outlived whatever utility it may have had. The time for the substantial compliance doctrine has come.

Since this call for substantial compliance was published, Professor Langbein reports that he has received only favourable response. He advises that he has yet to meet a scholar in the field of trust and estate law who has expressed disagreement on the merits of a substantial compliance doctrine.[91] In another recently published article Professor Langbein reiterated his view that courts in the United States should adopt a substantial compliance doctrine and admit wills to probate despite technical defects.[92]

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[87] *See Re Brander*, (1952) 4 D.L.R. 688 *per* Wilson J. (B.C.S.C.) and by the same judge, *Re Duck* [unreported] but cited in (1953) 31 B.C.R. 444. In Saskatchewan, *see Re Bohachewski Estate*, (1967) 60 W.W.R. 635 (Sask. Surr. Ct.) per Maher J. In Alberta, *see Re Knott*, (1959) 27 W.W.R. 382, a decision of the Alberta District court involving spouses executing each other's wills. The British Columbia decisions have been commented on by Dr. G. Kennedy; *Case and Comment*, (1953) 31 Can. B. Rev., 185 and 444. The Australian State of Queensland recently proposed to amend their succession law by including specific provision permitting a court to insert the necessary correcting language in a will instead of merely deleting certain words. (Working Paper on a Bill to Consolidate and Amend the Law of Succession and the Administration of Estates, (1975) section 31, *Power of Court to Rectify Wills*.)

[88] *Supra* n. 47.

[89] Gaubatz, John, *Notes toward a Truly Modern Wills Act*, (1977) 31 U. of Miami L. Rev. 497 at 560.

[90] Langbein, *Substantial Compliance with the Wills Act*, (1975) 88 Harv. Rev. 489 at 531.

[91] Correspondence, John Langbein to Law Reform Commission, April, 1979.

[92] Langbein, *The Crumbling of the Wills Act*, (1979), 65 A.B.A.J. 1192–1195.

The adoption of a rule of substantial compliance has been proposed for Queensland. The Law Reform Commission of Queensland in their Report No. 22 suggested the enactment of the following provision:

> The court may admit to probate a testamentary instrument executed in substantial compliance with the formalities prescribed by this section if the court is satisfied that the instrument expressed the testamentary intention of the testator.

In some respects even this reform has a fairly limited scope. A doctrine of "substantial compliance" presumes that the testator or witnesses attempted a standard form will, but erred in its execution in some technical aspect. In most cases in which an executor propounding a will would rely on a doctrine of "substantial compliance" the will would closely resemble a standard form will.

A proposal merely to abolish strict compliance with the *Wills Act* raises difficult questions concerning when a defect is a mere technical failure to fully comply with the Act, and when it is a result of the parties completely ignoring formal requirements altogether. Does a will attested by only one witness "substantially comply" with the present *Wills Act*? A proposal for reform which concentrates on an attempted compliance with technical rules leaves open cases where, because the document in issue in no way resembles a standard form will, the court must refuse it probate even though convinced that the document truly represents the testator's last wishes.

It has been suggested that it is only necessary to relax those requirements which have been found to give the most problems to testators.[93] This is, in our view, tantamount to a type of "ad hoc" substantial compliance doctrine. It does not address the fundamental problem posed by an undue reliance on formalities without regard to the purposes which they serve. Moreover, one might argue that such an approach is inconsistent. If formalities fulfill a valuable function, then it is inevitable that documents which fail to comply with the *Wills Act* will be refused probate. However, a proposal to relax certain formalities is, in effect, an acknowledgement that in some cases, insisting on strict compliance can cause hardship. If, for example, the justification for two witnesses is that it helps prevent fraud, reducing the requirement to one witness is an acknowledgement that the protection offered by the original formality was not as important as the hardship in an individual case. From this point, it is only a small step to adopt a dispensing power in which that determination can be made on a case by case basis.

(c) A Dispensing Power

(i) Generally

Several jurisdictions have either enacted, or considered enacting, a provision giving a court the discretion to admit documents to probate, even though the *Wills Act* formalities have not been observed. Such a power may, but need not be, framed in terms of "substantial compliance." We shall examine individually the dispensing powers enacted in, or proposed for, a number of jurisdictions.

(ii) Canada: The Indian Act[94]

Sections 42 to 50 of *The Indian Act* vest broad powers in the Minister of Indian Affairs and Northern Development to regulate the manner in which the property of an Indian resident on a reserve[95] devolves upon death. Section 45 of the Act provides:

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[93] *See, e.g.*, The Law Reform Committee, 22nd Report, 1980, W.F. Ormiston, *Formalities and Wills: A Plea for Caution* (1980) 54 Aust. L.J. 45.

[94] R.S.C. 1970, c. I-6. *See A.G. Can. and Rees v. Canard*, [1975] 3 W.W.R. 1 (S.C.C.) in which the relevant sections of this Act were held to be *intra vires*.

[95] *See ibid.* section 4 (3).

> **45.** (1) Nothing in this Act shall be construed to prevent or prohibit an Indian from devising or bequeathing his property by will.
>
> (2) The Minister may accept as a will any written instrument signed by an Indian in which he indicates his wishes or intention with respect to the disposition of his property upon his death.
>
> (3) No will executed by an Indian is of any legal force or effect as a dispostion of property until the Minister has approved the will or a court has granted probate thereof pursuant to this Act.

The discretion vested in the Minister under section 45 (2) operates in precisely the same fashion as a dispensing power would in practice. The Minister may, but is not required to, accept an informal will for probate. His discretion is limited by two threshold requirements: there must be a written instrument and it must be signed by the testator.

In response to our query concerning departmental practice under this section, we were advised that the Minister generally approves any testamentary document in writing. It need not be handwritten by the testator. Unwitnessed wills are rare, and only four have been submitted for the Minister's approval in the last four years. Witnessed holograph wills appear to be fairly common. On the whole, it would appear that informal wills have caused few problems.[96]

(iii) South Australia

On the recommendation of the Law Reform Commission of South Australia, the Supreme Court in that jurisdiction has been given the power to admit a document to probate even though it may not have been executed with all of the formalities required by the *Wills Act*. In 1975, the governing statute was amended to provide that:

> A document purporting to embody the testamentary intentions of a deceased person shall, notwithstanding that it has not been executed with the formalities required by this Act, be deemed to be a will of the deceased person if the Supreme Court, upon application for admission of the document to probate as the last will of the deceased, is satisfied that there can be no reasonable doubt that the deceased intended the document to constitute his will.

As far as we are aware, only one reported case deals with the South Australian Supreme Court's power to admit defective wills to probate under this dispensing power.[97] In the 1977 case of *Re Graham*,[98] detailed consideration was given to the South Australian provision. The facts of the case are simple. On April 4, 1977, an estate administration officer for Bagot's Executor and Trustee called on the recently widowed Mrs. Graham to discuss her late husband's estate. While he was at her home, the trust officer also received and recorded Mrs. Graham's instructions for her own will. He then returned to his office, had a will prepared in accordance with the instructions and returned to Mrs. Graham's house the following day. As there was no one at home, instructions for execution were noted on the document and he left it there to be signed by Mrs. Graham.

Mrs. Graham subsequently signed the will and then gave it to her nephew and requested that he "get it witnessed." The nephew took the will to two neighbours who signed as witnesses in his presence but not in Mrs. Graham's presence. The will was returned to Mrs. Graham by the nephew. On May 18, 1977 Mrs. Graham died leaving approximately $10,000 to her nephew in the impugned will. The procedure adopted did not meet the statutory requirements for execution, as the deceased had not signed the will in the presence of either witness, nor had the witnesses signed in Mrs. Graham's presence.

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[96] Letter from P.M. Tellier, Deputy Minister, to the Commission, February 26, 1981.

[97] Letter dated 2nd January, 1979, from the Chairman, Law Reform Committee of South Australia.

[98] *Re Graham*, (1978) 20 S.A.S.R. 200, per Jacobs J.

When the document was presented for probate, Jacobs J. stated:[99]

> Upon these facts, I have not the slightest doubt that the deceased intended the document which is before me to constitute her will. Accordingly, if the words of s. 12(2) of the Wills Act are to be given their plain and natural meaning, there is no reason at all why the document should not be deemed to be the will of the deceased, and admitted to probate as such, notwithstanding that it has not been executed with the formalities required by the Act.

The court in admitting the will to probate was of the opinion that the section should be given a broad and remedial interpretation. Jacobs J., who had assisted the South Australian Law Reform Commission in formulating its proposal that the court be granted such a power, concluded:[100]

> But if there is one proposition that may be stated with reasonable confidence, it is that s. 12(2) is remedial in intent, that is to say, that its purpose is to avoid the hardship and injustice which has so often arisen from a strict application of the formal requirements of a valid will, as dictated by s. 8 of the Act. This conclusion is, I think, clearly justified upon a review of the legislative history of the relevant sections of the Act, and the cases.

(iv) Israel

Since 1965, the Israeli Succession Law has contained a remedial provision enabling the courts to admit to probate a technically defective will. It provides:[101]

> Where the court has no doubt as to the genuineness of a will, it may grant probate thereof notwithstanding any defect with regard to the signature of the testator or of the witnesses, the date of the will, the procedure set out in sections 20 to 23 or the capacity of the witnesses.

No comprehensive studies are yet available on the Israeli experience with this provision. We are advised that there are few reported cases concerning the application of this section.[102]

The following comments are an approximate translation of remarks contained in the 1952 official draft Succession Law:

> The purpose of the requirements of the Act concerning the form of a will is to verify the wishes of the testator and to safeguard against forgeries and frauds. The details of form do not serve as a perfect or sole guardian against mischiefs and they should not be considered as being of overriding importance or absolute value. The courts should therefore be granted some discretion to alleviate rigid compliance with formal requirements as long as the genuineness of the will is beyond doubt. Our proposal is inspired by the general tendency to get rid of extensive formalism and prefer substance to form.
>
> Jewish Law dictates on the one hand strict compliance with certain formulae . . . on the other hand it developed the concept of "*Mitzvah* to carry out the wishes of the deceased". No such provision has been found in foreign law.

The leading Israeli case on the application of this provision is the 1977 decision, *Briel* v. *The Attorney-General*.[103] In this case, the District Court had refused to grant probate even though it had no doubt as to the genuineness of the will. The will was in breach of the succession law because it did not contain the date on which it was made. The Supreme Court allowed an appeal from the District Court's decision and made the following comments on the scope of the statute:[104]

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[99] *Ibid*.

[100] *Ibid*.

[101] Section 25 of the Israeli Succession Law 5725-1965.

[102] Letter from Dr. F.S. Perles, Advocate of Tel-Aviv, Jaffa, Israel dated December 18th, 1979.

[103] Israel C.A. 869/75, 32 P.D. 98.

[104] Since none of the cases interpreting section 25 have been officially translated from the Hebrew, this version is not authoritative. The concept of "mitzvah" is not readily translatable. It is literally a religious obligation, although in some contexts it may denote only a moral obligation or even merely a general obligation to assist others. We are advised that the "mitzvah" to carry out the wishes of a deceased person is a religious obligation: in effect a command from God.

> The question of all questions regarding the scope and operation of section 25 is always the "genuineness of the will." The court has to be first convinced, beyond all doubt, that it is indeed faced with a genuine will. Were it so convinced, the [formal] defects should not prevent it from granting probate of the will. Were it not convinced, even one defect requires it to abstain from granting probate.
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> It was already decided that a will which has no formal defect is presumed to be genuine and the one alleging invalidity carries the burden of proof . . . The presumption does not apply to a will which contains a formal defect and the one seeking grant of probate carries the burden of proving the genuineness of the will.
>
> In each and every case in which this Court has refused to grant probate to a will for formal defects, doubt existed as to the genuineness of the will and it is insignificant whether the doubt was raised for the formal defect itself . . . or for one of the matters dealt with in Art. B . . .
>
> Even the absence of a date [of making the will] might in certain cases raise a doubt as to the genuineness of the will . . . as, for example, in a case of several conflicting wills . . .
>
> The legislator's "guide-line" in the Law of Wills is the *Mitzvah* to carry out the wish of the deceased: Where the intent of the testator is expressed in a will, and no doubt exists as to the genuineness of the will, then his intentions should be ascertained (Sec. 54 (a)) in order to uphold the wishes of the deceased and not to frustrate them merely for a formal defect.

It should be noted, however, that that case also sets out certain threshold requirements which must exist before section 25 can be invoked in aid of a defective will. The court stated:[105]

> The discretion granted to the Court by Section 25 is a very wide one, and if there is no doubt as to the veracity of the will, there are three things only that cannot be remedied by Section 25: The testator, two witnesses, and a document in writing.

In contrast, in one case the Supreme Court allowed an appeal from the confirmation of a will whose two pages were typed by different typewriters. It was held that that raised sufficient doubt as to exclude the operation of section 25.[106] In other cases section 25 has received an even stricter interpretation. In commenting on one such case, one of our correspondents stated:[107]

> In Civil Appeal 679/76 the deceased had instructed his banker to open a joint account in the names of himself and another person, who was now the appellant. This appellant wanted the instruction to the bank to be construed as a kind of will, and he tried to rely on Section 25. The Supreme Court, dismissing the appeal, ruled that Section 25 comes to remedy defects in a will which was lawfully made, but does not create a new way to make a will.

Israeli experience with the provision has therefore been mixed. In particular, it does not yet appear to have been finally established whether section 25 can be called in aid only in respect of wills where there has been at least some attempt to comply with the *Wills Act* formalities. Although any legal analysis of the Israeli law is somewhat difficult owing to the lack of source material and the necessity of relying on the opinions of our correspondents, it would appear that Civil Appeal 679/76 is not necessarily inconsistent with *Briel* v. *The Attorney-General*, as in the former case the threshold requirements set out in *Briel* were not satisfied because the instructions to the bank were unwitnessed.

Qualitative assessments of section 25 vary. One commentator suggested that the majority of applications are rejected owing to the requirement that the genuineness of the will must be established before the court can exercise its discretion.[108] Less pessimistic are the comments of an Israeli judge who wrote

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[105] Translation of case supplied by Dr. F. S. Perles, *supra* n. 102.

[106] *Supra* n. 102.

[107] *Ibid.*

[108] Letter from Professor Uriel Reichman, Tel-Aviv University to Professor J. Langbein, July 26, 1979, copy on file at Law Reform Commission of British Columbia.

to us in response to an inquiry whether the provision had made the law less certain and impeded the administration of estates. He stated:

> [T]he law is definitely not "less certain" . . . The provisions of s. 25 do not tend to "increase litigation, expense and delay." On the very contrary it has been my experience that Advocates are gradually attaching less and less importance to defects in the form of a will since they are aware of the Court's approach, and will not oppose probate merely on grounds of such defects. I am, therefore, of opinion that s. 25 actually prevents a great deal of unnecessary litigation and saves time and expense in cases before the Court. Its effect is to limit the battleground to issues which would be the foremost if not the only ones, i.e. to the question: Is the will a true expression of the testator's intent?
>
> Court statistics do not reveal the frequency of invocation of s. 25 in applications before the Court. Every contested will comes before a District Court Judge. The reasons for opposing a will are not always based on adequate legal grounds for such opposition. Dissatisfied parties will often file an opposition on the most slender legal grounds, sometimes even only with a view to extracting some benefits from the beneficiares by moral pressure. In such cases every possible point will be taken and no trifling deviation from prescribed procedure will be overlooked. However, when the case comes up for hearing all unwarranted pleas as to form melt away mostly even before the Court pronounces on them. Section 25 is like a sword. Its very presence suffices and it has rarely to be unsheathed.

On balance, the Israeli experience is encouraging.

(v) Manitoba

Subsequent to the release of our Working Paper No. 28, in which we proposed the enactment of a dispensing power in British Columbia, the Law Reform Commission of Manitoba released a Report on the Wills Act and the Doctrine of Substantial Compliance.[109] They recommended that:

> 1. A remedial provision should be introduced in "*The Wills Act*" allowing the probate courts in Manitoba to admit a document to probate despite a defect in form, if it is proved on the balance of probabilities, that the document embodies the testamentary intent of the deceased person.
>
> 2. The provision should be worded so as to apply to defects in execution, alteration and revocation.
>
> 3. A further section should be enacted to allow the probate court to save a gift to a beneficiary who has signed for the testator or as a witness to a will, where the court is satisfied that no improper or undue influence was employed.

This proposal is limited to defects in a "document." It is likely that it was intended that "document" be restricted to written embodiments of testamentary intent, although the possibility that "document" might be read to include means of storing information as diverse as videotape or floppy disk was not considered.

This recommendation if implemented would vest a very broad discretion in the court. The only threshold requirement is apparently that the testamentary wishes must be in the form of a "document." The exercise of the power is, moreover, not contingent upon substantial compliance.

(vi) England

In a consultative document released in 1977 the English Law Reform Committee solicited comment on the possibility of introducing a "general dispensing power" into the English *Wills Act*.[110] However, in their 22nd report, issued in 1980, that option was rejected:[111]

> While the idea of a dispensing power has attractions, most of us were more impressed by the argument against it, namely that by making it less certain whether or not an informally executed will is capable of being admitted to

[109] September 8, 1980, Report No. 43.

[110] The Law Reform Committee, Consultative Document on The Making and Revocation of Wills, 1977 at 6.

[111] May 1980, Cmnd. 7902 at 3. For a critique of their recommendations, *see The Making and Revocation of Wills—I*, (1981) 125 Sol. J. 263.

> probate, it could lead to litigation, expense and delay, often in cases where it could least be afforded, for it is the home-made wills which most often go wrong. . . . We think that an attempt to cure the tiny minority of cases where things go wrong in this way might create more problems than it would solve and we have therefore concluded that a general dispensing power should not be introduced into our law of succession.

The English Committee went on to advocate certain limited reforms designed to relax the execution requirements contained in the English Wills Act.

3. A Dispensing Power for British Columbia

(a) Issues Bearing on the Introduction of a Dispensing Power

(i) Will the Provision Result in a Multiplicity of Forms of Wills?

An argument can be made that the problems associated with testamentary documents which existed in England prior to the formalities imposed in 1837 would be revived by the introduction of a remedial power. The *Wills Act, 1837* was designed to reduce the volume of estate-related litigation and to provide a means of readily identifying a document as a will. In fact, the South Australian provision has been criticized as being so broadly drafted as to extend to every citizen the right to make a privileged will.[112]

A number of our correspondents expressed some concern that the introduction of a dispensing power would result in a certain amount of confusion about the form a will must take to be valid. One correspondent noted:

> The Wills Act formalities have introduced the necessary self-discipline into the making of wills, if I may put it that way. My fear is that the proposals . . . will lead to the dissipation of that self-discipline, the belief that one can do it one's self will grow apace, and the volume of litigation will grow also. When I think of the serious attitudes of those groups to which I speak about will-making, and their desires "to get it right", and I compare that attitude with the easy and ambiguous way in which they write letters to their relatives and their friends, I find my concern put in a nutshell.

This is perhaps the most difficult argument to overcome for proponents of a dispensing power. It can be met partially by imposing mandatory threshold requirements, as in Israel, or by imposing an onerous burden of proof. The South Australian provision requires that the court be satisfied beyond a reasonable doubt that the document was intended by the testator to be his will. In the *Graham* case referred to previously, Jacobs J. was of the opinion that this requirement imposed some limits on the permissible form, but was loathe to specify them. He felt that the greater the departure from the requirements of the statute, then the harder it would be for the court to reach the required degree of satisfaction.

Whether this objection is practical is open to question. Even where a court may exercise a dispensing power, a premium is still placed upon executing a will in the traditional form. Such a document is instantly recognizable as a will and would generally be admitted to probate without the need for proof in solemn form. For this reason we expect that the vast majority of wills will continue to be executed in the traditional form. Both the South Australian and Israeli experience bear this out. The Manitoba Law Reform Commission noted:[113]

> It is argued that introduction of such a provision would discourage the use of the proper formalities thereby impairing performance of all the valuable functions. It is submitted that this argument is flawed. The provision recommended is a remedial provision. It will be used only at final stages to save a will which is defectively executed, revoked or altered. The doctrine is not applicable at initial

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[112] Palk, Simon N.L., *Informal Wills: From Soldiers to Citizens*, (1976) Adel. L. Rev. 382.

[113] Report on *The Wills Act* and the Doctrine of Substantial Compliance, 1980, No. 43 at 19-20.

stages of execution. Reliance on it at that stage would mean subjecting an estate to needless litigation. A remedial provision should not discourage or in any way affect the use of formalities.

(ii) Will the Result be Increased Litigation Due to the Possibility of Numerous Contending Testamentary Documents?

At the time of the introduction of the South Australian provision, a prediction was made that the floodgates of litigation would be opened. This has not in fact occurred in Australia and only one case involving the remedial provision has been reported. Our Israeli correspondents have also indicated that there has not been a significant increase in the number of contested wills. In fact, one of our correspondents expressed the view that litigation has been reduced due to the unprofitability of taking technical formal objections.

It is undeniable that a dispensing power does increase the possibility that competing testamentary instruments may be produced for probate. However, we are not convinced that such conflicts will arise often enough to constitute a serious drawback. Moreover, where a personal representative is faced with a number of documents which could be construed as having testamentary effect, and concludes that he should not propound any particular document, it is open to him or to a person who alleges that the rejected document is valid as a will, to issue a citation to propound an alleged will under Rule 61 (45) of the 1976 Rules of Court. That rule provides:

> (45) (a) Where there is or may be a document which may be alleged to be a will of a deceased person, a citation to propound the document as a will may be issued by any person interested.
> (b) The citation shall be in Form 76 and shall be supported by affidavit and shall be directed to the executor and any other person named in the document.
> (c) An answer shall be in Form 77.

Where an answer is entered to such a citation, the validity of the document will be litigated.

There appears to be no authority, however, concerning the effect of a grant of probate made in default of an answer by those cited. The sanction contemplated by the rule itself is the issuance of probate without regard to the document in respect of which the citation issued. Upon the issuance of such probate, the executor is entitled to act upon the grant unless and until it is revoked.[114] Even if a person who failed to answer a citation is able to satisfy what would probably be the onerous burden of displacing the prior will, it is likely that any claims he may raise against the executor or beneficiaries under the first will would be defeated by laches, estoppel, or the defence of change of position. In any event the whole question of the effect of the revocation of a grant of letters probate at the instance of a person who fails to propound a will when cited to do so is one which can also arise under the current law, and the enactment of a remedial provision does not therefore give rise to any new problems.

On balance we feel that the remedies available to an executor who questions the effect of any document, and the protection offered to him by law, strike an adequate balance between the flexibility offered by a dispensing power and the executor's need to have some basis upon which to assess his position. As one of our correspondents noted:

> The obvious argument against the proposal is that it would encourage both fraud and litigation. As I said above, I do not think the opportunity for fraud would be any greater than it is at present. I think the fact that in the case of suspicious circumstances the onus of proving that the testator knew and approved of the

[114] See *Kerr* v. *McLennan*, (1875) 9 N.S.R. 502 (C.A.). It was regarded as a judgment *in rem* in *Irwin* v. *Bank of Montreal*, (1876) 38 U.C.Q.B. 375; see *Book* v. *Book*, (1887) 15 O.R. 119.

contents of the will is on the propounder is as great, if not a greater protection against fraud, than are the present formalities. It is true that there may be more litigation. But it will also be true that the testator's intention will be less often defeated, and that is a result worth paying for.

(iii) Will the Provision Result in Undue Delay in the Administration of Estates?

Such a delay might arise, for example, where beneficiaries must await the result of a contested probate action before receiving their interests under the intestacy. If another will is in existence, distribution must await the court's decision on the validity of a faulty will executed after a formally valid will.

On the other hand, such a delay can be justified on the grounds that it would provide an opportunity to give effect to the testator's intentions. Distribution of estates in British Columbia is already postponed for six months in order to permit applications to be made under the *Wills Variation Act*. The granting of a dispensing power to the court would not likely extend this period significantly, if at all. Even if it does, we think that the execution of the testator's actual intent is a more important consideration.

(iv) Are There Other Superior Methods of Accomplishing the Same Ends?

The granting of a dispensing power to the Supreme Court is not the only method of giving effect to the imperfectly expressed wishes of a testator. As we pointed out earlier, one could adopt the approach of reducing the number and type of formalities required. In addition, Professor Langbein has called on courts in the United States to develop their own "doctrine of substantial compliance" apart from legislation.[115] It is likely that Canadian courts would be very reluctant to develop such a doctrine without authorizing legislation. We have already outlined our objections to both these courses. Merely amending the formalities or relaxing the rule of strict compliance would not remedy the injustice created by the rejection of a document which although it does not meet the new formalities, nevertheless expresses the testator's true intent.

(v) Will a Dispensing Power Prevent the Frustration of Testamentary Intent?

The primary argument advanced in favour of a dispensing power is that it allows the court to give effect to a testator's wishes when it is certain that the document is meant to be the last will of the deceased. The failure of a testator to comply with the requirements of the *Wills Act* occasionally leads to a court expressing regret that it must reject a will on a technical point, since the court also finds that the document represented the true wishes of the testator. A dispensing power would provide the court with a back-stop to prevent the sort of injustice which can occur when a genuine will must be rejected.

We feel that no policy ground save that of convenience is served by rejecting a will which undoubtedly expresses the testator's true intent, and on balance find the argument based on convenience unconvincing. Although a study of probate procedure is beyond the scope of this paper, it is perfectly possible to devise a scheme which will make the task of a person propounding a faulty will easier. Under the current Supreme Court Rules, for example, an executor or administrator with or without will annexed is already obliged under Rule 61 (3) to swear an affidavit in form 66, 67 or 68. The latter two

[115] Langbein, The Crumbling of the Wills Act, *supra* n. 92.

forms require the deponent to set out either his belief that the document represents the last will of the deceased, or alternatively that despite a diligent search, no will was found. It would not be a large step for him to also have to set out the circumstances in which the will came to be defectively executed. Alternatively, the rules could provide that certain types of informal wills (e.g. holograph wills) should be admitted as a matter of course upon conditions. Such conditions might include the filing of affidavits concerning the genuineness of the handwriting. Later in this chapter we shall canvass a number of possible approaches to probating technically defective wills.

(vi) Will Uncertainty be Increased or Reduced?

As Professor Langbein points out, it is difficult to predict when the equities of a particular case will induce a court to try to avoid formal requirements. He notes that the strict compliance rule has achieved, what is in many respects, the worst of both worlds. When it is enforced unjust harshness may result, and when it is not, it may be as a result of judicial artifice.[116] The Israeli experience suggests that a dispensing power may reduce uncertainty by clarifying the issues between parties to a dispute. Many attacks on form are motivated not by any suspicion that the will does not represent the testator's true intent, but rather because the person challenging the will does not like its substantive provisions. The existence of a dispensing power forces the parties to litigate the real issues between them, and thereby simplifies proceedings.

(b) The Scope of a Remedial Power

An essential element of any decision to provide the court with a jurisdiction to admit wills to probate under a dispensing power is the scope of the power which the court may exercise. Must there be an attempted compliance with the *Wills Act*? A court could be restricted to remedying those wills executed under circumstances in which the testator had substantially complied with the Act. Thus a signature in the wrong position would not necessarily lead to the invalidity of the will.

In Professor Langbein's view the courts should as a matter of law require only substantial compliance with formal requirements. This presumes some attempt to comply with the requisite forms. The exact nature of any attempts to comply with formal requirements which would satisfy the "substantial compliance" doctrine is a question for argument. It would appear that Israeli law adopts this limited scope for its dispensing power; at least one court having held that there must have been some compliance with the Israeli *Wills Act*.

On the other hand, a broader dispensing power could be given to the court. Such a provision would not be restricted to cases where the testator had "substantially complied" with the formalities. It is this approach which has been adopted in South Australia. The statute provides that a testamentary document may be deemed to be the will of a deceased if the court is satisfied beyond a reasonable doubt that the testator meant the document to be his will. The language of the legislation is broad enough to permit the court to admit a will to probate although no attempt is made to comply with the statute.

We are of the opinion that the Supreme Court of British Columbia should be given the power to admit a will to probate notwithstanding that no attempt has been made by the testator to comply with the *Wills Act*, as long as the court is satisfied that the deceased intended the document to constitute his will.

[116] *Ibid.*

(c) Threshold Requirements

(i) Generally

Although we have concluded that as a general rule, effect should be given to a testamentary instrument which undoubtedly embodies the testator's true intent, we are also firmly of the view that a general dispensing power may be cast too broadly. Certain forms of testamentary dispositions are so inherently suspicious that the benefits which might be derived from admitting them to probate are clearly outweighed by the inevitability of litigation and the probability of confusion. At the same time, if the law is to be perceived as arriving at defensible results, it must correspond to public expectations. Wills have always been regarded as documents particularly vulnerable to fraud, and hence the formalities of execution have been particularly onerous. The recognition that the application of these formal requirements is not justified in every case does not lead to the inevitable conclusion that every alleged embodiment of testamentary intent should be admissible to probate. Wills are generally recognized to be important documents. We therefore think it appropriate that the law recognize their special status by setting out certain threshold requirements for the invocation of a dispensing power.

We are of the view that the general public recognizes that most important documents should be evidenced in writing, and signed. At the same time, the law has traditionally regarded unusual circumstances surrounding the execution of a will with suspicion, and this view probably reflects a genuine public concern that suspicious wills be closely scrutinized. This suggests three possible threshold requirements — writing, a signature, and an onerous burden of proof.

(ii) Writing

We are of the view that no embodiment of testamentary intent should be admissible to probate unless it is in writing. We would not limit our recommendation to handwritten documents. We prefer to leave the question of wills otherwise reproduced to individual cases, rather than formulating a general rule. Earlier in this report we noted that in some jurisdictions which adopt holograph wills, controversy has arisen whether a holograph will need be wholly in the testator's handwriting, or whether such a will is admissible if only its material parts are handwritten. We wish to avoid this controversy completely. While handwriting itself may be a valuable indicator of the writer's identity, that in itself does not justify refusing probate to a will adequately proven by other evidence.

In recent years modern technology has brought methods of storing data, undreamt of by the draftsman of the *Wills Act, 1837*, well within the reach of the average testator. Home computers, tape recorders and videotape recorders, while not ubiquitous, are easily accessible. Should a testator be able to videotape his wills, or to program his computer to reproduce his will on its screen at a given command?

The provisions of the *Wills Act* and the *Interpretation Act*, when read together, leave open the possibility that a will may be probated even though the "writing" consists of images mechanically or electronically reproduced. "Writing" is defined in section 29 of the *Interpretation Act* as follows:

> "writing," "written" or a term of similar import includes words printed, typewritten, painted, engraved, lithographed, photographed or represented or reproduced by any mode of representing or reproducing words in visible form.

The inherent limitation in this definition is that the words be reproduced "in visible form." This would, for example, rule out videotapes, tape record-

ings and various devices (e.g. floppy disks, programming cards) used to program computers, which in turn reproduce the words on a television screen or machine written copy. Although the end product of videotapes or floppy disks may be legible on a screen, the words themselves cannot be executed by the testator as required by sections 4 and 6 of the *Wills Act*, and by our recommendation. The floppy disc or videotape may be signed, but the words of the will, although reproduced on the tape or disc, are not in visible form. The tape or disc would not therefore constitute the "writing" required by the *Wills Act*, section 3, or the "writing" which must be signed under our recommendation.

One novel form of will is arguably sanctioned by section 29 of the *Interpretation Act*. It would be possible to prepare a filmed will using animated letters and words. The words on the film would be in visible form without the intervention of any electronic or mechanical device, although the use of a projector would make viewing easier. The testator could then sign the film at its end, together with the two witnesses required by section 4.

Although it is possible to foresee that in a relatively short period of time, storing wills electronically, or on tape, may be advantageous, we have concluded that provision for such wills in a modern *Wills Act* would be premature. We are advised that the detection of tampering with electronic means of storing information would likely be a lengthy and expensive process, and that experts qualified to testify on such matters would not be readily accessible to executors in British Columbia. Moreover, the electronic storage and transmission of data is a rapidly changing field of technology, and for that reason we are not prepared to attempt to identify any new and acceptable medium for recording testamentary intentions. We therefore make no recommendation to expand the definition of "writing."

(iii) Signature

In the Working Paper we proposed, as a threshold requirement, that the document bear the testator's signature. Most people would readily accept the notion that affixing one's signature to a document is the usual means of approving and adopting its contents. We have concluded that the dispensing power we propose for British Columbia should require that the document be signed.

This aspect of our proposal attracted some comment from the Manitoba Law Reform Commission. They stated:[117]

> The British Columbia approach is beneficial in that it is broader than the Queensland approach and it does cover most of the difficulties currently encountered. Yet, circumstances can still be envisioned where strict adherence to even these minimal formalities could defeat the testator's intention. As Prof. Langbein points out what of the testator who is about to sign his will in front of witnesses, when an "interloper's bullet or a coronary seizure fells him". The likelihood of such an occurrence is small but the fact remains there is no necessity for such limitations to the proposed section. In effect such requirements do not conform with the functional analysis on which the remedial provision is based. For this reason such a limitation is not recommendable.

We are not of the view that the possibility of an interloper's bullet, or other similar and equally unlikely possibilities warrant the deletion of the requirement of a signature. We find more persuasive the case of a careful testator who, in striving to keep his testamentary dispositions up to date, writes out several alternative drafts. He decides in the end not to change his will, but retains his final draft for future reference. It is, of course, unsigned, and is

[117] *Supra* n. 113 at 19-20.

found at his death among his papers. Is it valid or not? The inevitable result must be litigation. As we are convinced that this situation is many times more likely than that which worried the Manitoba Commission, we have concluded that insisting on a signature is a valuable safeguard which will prevent injustice, confusion and unnecessary expense far more often than it will cause hardship.

We are not swayed by the argument that such a requirement "does not conform with the functional analysis." In fact, we believe quite the opposite. We acknowledge that formality has some purpose. Here the requirement of a signature performs a valuable channelling and evidentiary function. The point of introducing a dispensing power is to temper the arbitrariness with which rules respecting formalities have been applied, and not to deny the general desirability of formalities. We have simply concluded that the harm which would ensue from relaxing this particular requirement outweighs any benefit which would accrue from its abolition. In short, far from abandoning any functional analysis, in our view adopting the requirement of a signature recognizes that in some respects formalities serve a valuable function. It restricts the application of a dispensing power to documents which are most likely to represent attempts to communicate a settled testamentary intent.

In recommendation 4, we proposed that a general provision respecting signature by a person acting at the testator's direction should be enacted. We see no reason why this provision should not apply equally to a testator's signature on an informal will.

(iv) Burden of Proof

The South Australian provision requiring proof beyond a reasonable doubt raises the issue of whether a similar requirement should be imported into British Columbia law. We have concluded that the standard of proof should be the civil litigation standard of proof on the balance of probabilities. It is this standard which generally applies in probate matters.

A consideration in arriving at such a conclusion was the fact that the civil litigation standard is not itself immutable. In a lawsuit "proof" is inextricably intertwined with "belief", and the readiness of a court to be persuaded of the existence of a certain state of affairs will depend upon factors other than the mere mechanical weighing up of evidence. The point was put by Dixon J. in *Briginshaw* v. *Briginshaw*[118] as follows:

> The truth is that, when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality. No doubt an opinion that a state of facts exists may be held according to indefinite gradations of certainty; and this has led to attempts to define exactly the certainty required by the law for various purposes. Fortunately, however, at common law no third standard of persuasion was definitely developed. Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

It has long been held that where the circumstances surrounding the execution of a will give rise to a suspicion that it may not represent the

[118] (1938) 60 C.L.R. 336.

testator's true intent, a burden is placed upon the person propounding the will to dispel that suspicion by affirmative evidence. It is likely that the problem of determining testamentary intent where a document is defectively executed will be treated similarly. The cases respecting the dispelling of a suspicion establish that although the burden is only to establish testamentary intent on the balance of probabilities, the court will closely scrutinize the evidence before deciding to act upon it. In *Re Martin; MacGregor* v. *Ryan*[119] Ritchie J. held *per curia*:

> Counsel for the appellant contended that in all cases where the circumstances surrounding the preparation or execution of the will give rise to a suspicion, the burden lying on the proponents of that will to show that it was the testator's free act is an unusually heavy one, but it would be a mistake, in my view, to treat all such cases as if they called for the meeting of some standard of proof of a more than ordinarily onerous character. The extent of the proof required is proportionate to the gravity of the suspicion and the degree of suspicion varies with the circumstances of each case. It is true that there are expressions in some of the judgments to which I have referred which are capable of being construed as meaning that a particularly heavy burden lies upon the proponents in all such cases, but in my view nothing which has been said should be taken to have established the requirements of a higher degree of proof.

There can be no closed list of circumstances which will cause the court to scrutinize the evidence jealously. The less the document resembles a standard will, the stricter the proof that will be required. Where the will contains unusual types of dispositions, or legatees whose inclusion as objects of the testator's bounty is unexpected, the court's suspicion may be aroused. Undoubtedly the court will also be concerned with the physical condition of the will, and in the case of informal documents such as letters, any recital of unusual facts may make it more difficult to establish the requisite testamentary intent.

(d) Transition

We think it important to specify that a dispensing power should apply only to documents signed by a testator who died after the legislation implementing our recommendation comes into force. Otherwise, it is possible that executors and beneficiaries who have acted in reliance on the invalidity of an informal or defectively executed document would be prejudiced. We do not wish to create a retroactive right to seek probate of an informal will where letters of administration or a grant of letters probate have already issued.

(e) Recommendation

The Commission recommends that:

5. The Wills Act *be amended by adding a section comparable to the following:*

Dispensing Power

Notwithstanding section 4, a document is valid as a will if

(a) it is in writing,

(b) it is signed by the testator,

(c) the testator dies after this section comes into force,

and the court is satisfied that the testator knew and approved of the contents of the will and intended it to have testamentary effect.

6. The definition of "will" contained in section 1 of the Wills Act *be amended to include a document valid as a will under Recommendation 5.*

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[119] [1965] S.C.R. 757.

Maine Statutory Will Statute

§ 2-514. Statutory wills

(a) Any person may execute a will on the following form and the will shall be presumed to be reasonable. This section does not limit any spousal rights, rights to exempt property or other rights set forth elsewhere in this Code.

Maine Statutory Will

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS STATUTORY WILL HAS SERIOUS LEGAL EFFECTS ON YOUR FAMILY AND PROPERTY. IF THERE IS ANYTHING IN THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD CONSULT A LAWYER AND ASK HIM TO EXPLAIN IT TO YOU.

2. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS OR YOUR SPOUSE'S ELECTIVE SHARE, AND IT WILL NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

3. THIS WILL IS NOT DESIGNED TO REDUCE DEATH TAXES OR ANY OTHER TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.

4. YOU CANNOT CHANGE, DELETE, OR ADD WORDS TO THE FACE OF THIS MAINE STATUTORY WILL. YOU SHOULD MARK THROUGH ALL SECTIONS OR PARTS OF SECTIONS WHICH YOU DO NOT COMPLETE. YOU MAY REVOKE THIS MAINE STATUTORY WILL AND YOU MAY AMEND IT BY CODICIL.

5. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

6. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

7. IF YOU HAVE ANOTHER CHILD AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

8. THIS WILL IS NOT VALID UNLESS IT IS SIGNED BY AT LEAST TWO WITNESSES. YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL.

9. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

10. IF YOU HAVE ANY DOUBTS WHETHER OR NOT THIS WILL ADEQUATELY SETS OUT YOUR WISHES FOR THE DISPOSITION OF YOUR PROPERTY, YOU SHOULD CONSULT A LAWYER.

MAINE STATUTORY WILL OF

_____

(Print your name)

Article 1. Declaration

This is my will and I revoke any prior wills and codicils.

Article 2. Disposition of my property

2.1 REAL PROPERTY. I give all my real property to my spouse, if living; otherwise it shall be equally divided among my children who survive me; except as specifically provided below: (specific distribution not valid without signature.)

I leave the following specific real property to the person(s) named:

(name)	(description of item)	(signature)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2.2 PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings, household items, personal automobiles, and personal items to my spouse, if living; otherwise they shall be equally divided among my children who survive me; except as specifically provided below: (specific distribution not valid without signature.)

I leave the following specific items to the person(s) named:

(name)	(description of item)	(signature)

2.3 CASH GIFT TO CHARITABLE ORGANIZATIONS OR INSTITUTIONS: I make the following cash gift(s) to the named charitable organizations or institutions in the amount stated. If I fail to sign this provision, no gift is made. If the charitable organization or institution does not survive me or accept the gift, then no gift is made.

(name)	(amount)	(signature)

2.4 ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause by placing my initials in the box in front of the letter "A", "B" or "C" signifying which clause I wish to adopt. I place my signature after clause "A" or clause "B", or after each individual distribution in clause "C". If I fail to sign the appropriate distribution(s) or if I sign in more than one clause or if I fail to place my initials in the appropriate box, this paragraph 2.4 will be invalid and I realize that the remainder of my property will be distributed as if I did not make a will.

Property Disposition Clauses. (select one).

____ A. I leave all my remaining property to my spouse, if living. If not living, then in equal shares to my children and the descendants of any deceased child.

_____

(signature)

B. I leave the following stated amount to my spouse _____ and the remainder in equal shares to my children and the descendants of any deceased child. If my spouse is not living, that share shall be distributed in equal shares to my children and the descendants of any deceased child.

_____

(signature)

____ C. I leave the following stated amounts to the persons named:

(name)	(amount)	(signature)
(name)	(amount)	(signature)
(name)	(amount)	(signature)
(name)	(amount)	(signature)
(name)	(amount)	(signature)

2.5 UNDISTRIBUTED PROPERTY. If I have any property which, for any reason, does not pass under the other parts of this will, all of that property shall be distributed as follows: (Draw a line through any unused space.)

_____

(this paragraph only valid if signed)

Article 3. Nomination of guardian, conservator and personal representative

3.1 GUARDIAN. (If you have a child under 18 years of age, you may name at least one person to serve as guardian for the child.)

If a guardian is needed for any child of mine, then I nominate the first guardian named below to serve as guardian of that child. If the person does not serve, then the others

shall serve in the order I list them. My nomination of a guardian is not valid without my signature.

FIRST GUARDIAN _____ _____
(signature)

SECOND GUARDIAN _____ _____
(signature)

THIRD GUARDIAN _____ _____
(signature)

3.2 CONSERVATOR. (A conservator may be named to manage the property of a minor child. You do not need to name a conservator if you wish the guardian to act as conservator. If you wish to name a conservator in addition to a guardian, complete this paragraph, 3.2. If you do not wish to name a separate conservator, do not complete this paragraph.)

I nominate the first conservator named below to serve as conservator for any minor children of mine. If the first conservator does not serve, then the others shall serve in the order I list them. My nomination of a conservator is not valid without my signature.

FIRST CONSERVATOR _____ _____
(signature)

SECOND CONSERVATOR _____ _____
(signature)

THIRD CONSERVATOR _____ _____
(signature)

3.3 PERSONAL REPRESENTATIVE. (Name at least one.) I nominate the person or institution named as first personal representative below to administer the provisions of this will. If that person or institution does not serve, then I nominate the others to serve in the order I list them. My nomination of a personal representative is not valid without my signature.

FIRST PERSONAL REPRESENTATIVE _____ _____
(signature)

SECOND PERSONAL REPRESENTATIVE _____ _____
(signature)

THIRD PERSONAL REPRESENTATIVE _____ _____
(signature)

I sign my name to this Maine Statutory Will on _____ (date) at _____ (city)

in the State of _____.

_____
Your Signature

STATEMENT OF WITNESSES (You must have two witnesses.)

Each of us declares that the person who signed above willingly signed this Maine Statutory Will in our presence or willingly directed another to sign it for him or her or that he or she acknowledged that the signature on this Maine Statutory Will is his or hers or that he or she acknowledged that this Maine Statutory Will is his or her will and we sign below as witnesses to that signing.

Signature _____
Printed name _____
Address _____

Signature _____
Printed name _____
Address _____

(b) Forms for executing a statutory will shall be provided at all Probate Courts for a cost equivalent to the reasonable cost of printing and storing the forms. A statutory will shall be deemed to be valid if the blanks are filled in with a typewriter or in the handwriting of the person making the will. Failure to complete or mark through any section or part of a section in the statutory will shall not invalidate the entire will. Failure to sign any section or part of a section in the statutory will requiring a signature shall only invalidate the part not signed, except as specifically provided in paragraph 2.4.

1983, c. 376; 1983, c. 816, § A, 7, eff. April 24, 1984.

1983 Amendment. Subsection (a): Chapter 816, under the heading "Maine Statutory Will", in Art. 2, 2.4, par. B, substituted "spouse" for "wife" and "that" for "her" in 2nd sentence.

Library References

Wills ⇐94 et seq.
C.J.S. Wills § 155 et seq.

Michigan Statutory Will Statute

§27.5123(1) Statutory will; validity.] Sec. 123a. A will which is executed in the form prescribed by section 123c and which is otherwise in compliance with the terms of the Michigan statutory will form is a valid will. (MCL §700.123a.)

History. Added by Pub Acts 1986, No. 61, imd eff March 27, which contained a section 2 providing: "This amendatory act shall take effect July 1, 1986."

§27.5123(2) Printing and distribution requirements.] Sec. 123b. Persons printing and distributing the Michigan statutory will shall print and distribute the form verbatim as it appears in section 123c. The notice provisions shall be printed in 10-point boldface type. (MCL §700.123b.)

History. Added by Pub Acts 1986, No. 61, imd eff March 27, which contained a section 2 providing: "This amendatory act shall take effect July 1, 1986."

§27.5123(3) Form of statutory will.] Sec. 123c. The form of the Michigan statutory will is as follows:

MICHIGAN STATUTORY WILL

NOTICE

1. Any person age 18 or older and of sound mind may sign a will.
2. There are several kinds of wills. If you choose to complete this form, you will have a Michigan statutory will. If this will does not meet your wishes in any way, you should talk with a lawyer before choosing a Michigan statutory will.
3. Warning! It is strongly recommended that you do not add or cross out any words on this form except for filling in the blanks because all or part of this will may not be valid if you do so.
4. This will has no effect on jointly-held assets, on retirement plan benefits, or on life insurance on your life if you have named a beneficiary who survives you.
5. This will is not designed to reduce inheritance or estate taxes.
6. This will treats adopted children and children born outside of wedlock who would inherit if their parent died without a will the same way as children born or conceived during marriage.
7. You should keep this will in your safe deposit box or other safe place. By paying a small fee, you may file the will in your county's probate court for safekeeping. You should tell your family where the will is kept.
8. You may make and sign a new will at any time. If you marry or divorce after you sign this will, you should make and sign a new will.

INSTRUCTIONS:

1. To have a Michigan statutory will, you must complete the blanks on the will form. You may do this yourself, or direct someone to do it for you. You must either sign the will or direct someone else to sign it in your name and in your presence.
2. Read the entire Michigan statutory will carefully before you begin filling in the blanks. If there is anything you do not understand, you should ask a lawyer to explain it to you.

MICHIGAN STATUTORY WILL OF

_____

(Print or type your full name)

ARTICLE 1. DECLARATIONS

This is my will and I revoke any prior wills and codicils. I live in _____ County, Michigan.

My spouse is _____

(Insert spouse's name or write "None")

My children now living are:

_____ _____

(Insert names or write "None")

_____ _____

_____ _____

ARTICLE 2. DISPOSITION OF MY ASSETS

2.1 CASH GIFTS TO PERSONS OR CHARITIES. (Optional)

I can leave no more than two (2) cash gifts. I make the following cash gifts to the persons or charities in the amounts stated here. Any inheritance tax due shall be paid from the balance of my estate and not from these gifts.

Full name and address of person or charity to receive cash gift. (Name only one (1) person or charity here)

(Please print) _____ of _____

(Insert name) (Insert address)

AMOUNT OF GIFT (In figures): $_____

AMOUNT OF GIFT (In words): _____ dollars

_____

Your Signature

Full name and address of person or charity to receive cash gift. (Name only one (1) person or charity here)

(Please print) _____ of _____

(Insert name) (Insert address)

AMOUNT OF GIFT (In figures): $_____

AMOUNT OF GIFT (In words): _____ dollars

_____

Your Signature

2.2 PERSONAL AND HOUSEHOLD ITEMS.

I may leave a separate list or statement either in my handwriting or signed by me at the end, regarding gifts of specific books, jewelry, clothing, automobiles, furniture, and other personal and household items.

I give my spouse all my books, jewelry, clothing, automobiles, furniture, and other personal and household items not included on any such separate list or statement. If I am not married at the time I sign this will, or if my spouse dies before me, my personal representative shall distribute those items, as equally as possible, among my children who survive me. If no children survive me, these items shall be distributed as set forth in paragraph 2.3.

Any inheritance tax due shall be paid from the balance of my estate and not from these gifts.

2.3 ALL OTHER ASSETS.

I give everything else I own to my spouse. If I am not married at the time I sign this will, or if my spouse dies before me, I give these assets to my children and the descendants of any deceased child. If no spouse, children, or descendants of children survive me, I choose one of the following distribution clauses by signing my name on the line after that clause. If I sign on both lines, or if I fail to sign on either line, or if I am not now married, these assets will go under distribution clause (b).

Distribution clause, if no spouse, children, or descendants of children survive me (Select only one).

(a) One-half to be distributed to my heirs as if I did not have a will, and one-half to be distributed to my spouse's heirs as if my spouse had died just after me without a will.

_____

(Your Signature)

(b) All to be distributed to my heirs as if I did not have a will.

_____

(Your Signature)

ARTICLE 3. NOMINATIONS OF PERSONAL REPRESENTATIVE, GUARDIAN, AND CONSERVATOR

Personal representatives, guardians, and conservators have a great deal of responsibility. The role of a personal representative is to collect your assets, pay debts and taxes from those assets, and distribute the remaining assets as directed in the will. A guardian is a person who will look after the physical well-being of a child. A conservator is a person who will manage a child's assets and make payments from those assets for the child's benefit. Select them carefully. Also, before you select them, ask them whether they are willing and able to serve.

3.1 PERSONAL REPRESENTATIVE. (Name at least one)

I nominate_____

(Insert name of person or eligible financial institution)

of_____

(Insert address)

to serve as personal representative.

If my first choice does not serve, I nominate

_____

(Insert name of person or eligible financial institution)

of_____

(Insert address)

to serve as personal representative.

3.2 GUARDIAN AND CONSERVATOR.

Your spouse may die before you. Therefore, if you have a child under age 18, name a person as guardian of the child, and a person or eligible financial institution as conservator of the child's assets. The guardian and the conservator may, but need not be, the same person.

If a guardian or conservator is needed for any child of mine, I nominate_____

(Insert name of person)

of_____

as guardian

(Insert address)

and_____

(Insert name of person or eligible financial institution)

of_____

(Insert address)

as conservator.

If my first choice cannot serve, I nominate

_____

(Insert name of person)

of_____

as guardian

(Insert address)

and_____

(Insert name of person or eligible financial institution)

of_____

(Insert address)

as conservator.

3.3 BOND.

A bond is a form of insurance in case your personal representative or a conservator performs improperly and jeopardizes your assets. A bond is not required. You may choose whether you wish to require your personal representative and any conservator to serve with or without bond. Bond premiums would be paid out of your assets.

(Select only one)

(a) My personal representative and any conservator I have named shall serve with bond.

_____

(Your signature)

(b) My personal representative and any conservator I have named shall serve without bond.

_____

(Your signature)

3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

Definitions and additional clauses found at the end of this form are part of this will.

I sign my name to this Michigan statutory will on———, 19—.

_____

(Your signature)

NOTICE REGARDING WITNESSES

You must use two (2) adult witnesses who will not receive assets under this will. It is preferable to have three (3) adult witnesses. All the witnesses must observe you sign the will, or have you tell them you signed the will, or have you tell them the will was signed at your direction in your presence.

STATEMENT OF WITNESSES

We sign below as witnesses, declaring that the person who is making this will appears to be of sound mind and appears to be making this will freely and without duress, fraud, or undue influence and that the person making this will acknowledges that he or she has read, or has had it read to them, and understands the contents of this will.

(Print Name)	(Signature of Witness)
(Address)	
(City) (State) (Zip)	
(Print Name)	(Signature of Witness)
(Address)	
(City) (State) (Zip)	
(Print Name)	(Signature of Witness)
(Address)	
(City) (State) (Zip)	

Definitions

The following definitions and rules of construction shall apply to this Michigan statutory will:

(a) "Assets" means all types of property you can own, such as real estate, stocks and bonds, bank accounts, business interests, furniture, and automobiles.

(b) "Jointly-held assets" means those assets ownership of which is transferred automatically upon the death of 1 of the owners to the remaining owner or owners.

(c) "Spouse" means your husband or wife at the time you sign this will.

(d) "Descendants" means your children, grandchildren, and their descendants.

(e) "Descendants" or "children" includes persons born or conceived during marriage, persons legally adopted, and persons born out of wedlock who would inherit if their parent died without a will.

(f) Whenever a distribution under a Michigan statutory will is to be made to a person's descendants, the assets are to be divided into as many equal shares as there are then living descendants of the nearest degree of living descendants and deceased descendants of that same degree who leave living descendants. Each living descendant of the nearest degree shall receive 1 share. The share of each deceased **descendant of that same degree shall be divided among his or her descendants in the same manner.**

(g) "Heirs" means those persons who would have received your assets if you had died without a will, domiciled in Michigan, under the laws which are then in effect.

(h) "Person" includes individuals and institutions.

(i) Plural and singular words include each other, where appropriate.

(j) If a Michigan statutory will states that a person shall perform an act, the person is required to perform that act. If a Michigan statutory will states that a person may do an act, the person's decision to do or not to do the act shall be made in a good faith exercise of the person's powers.

Additional Clauses

(a) Powers of personal representative.

(1) The personal representative shall have all powers of administration given by Michigan law to independent personal representatives, and the power to invest and reinvest the estate from time to time in any property, real or personal, even though such investment, by reason of its character, amount, proportion to the total estate, or otherwise, would not be considered appropriate for a fiduciary apart from this provision. In dividing and distributing the estate, the personal representative may distribute partially or totally in kind, may determine the value of distributions in kind without reference to income tax basis, and may make non pro rata distributions.

(2) The personal representative may distribute estate assets otherwise distributable to a minor beneficiary to (a) the conservator, or (b) in amounts not exceeding $5,000.00 per year, either to the minor, if married; to a parent or any adult person with whom the minor resides and who has the care, custody, or control of the minor; or the guardian. The personal representative is free of liability and is discharged from any further accountability for distributing assets in compliance with the provisions of this paragraph.

(b) Powers of guardian and conservator. A guardian named in **this will shall have the same authority with respect to the child as a parent having legal custody would have. A conservator named in this will shall have all of the powers conferred by law. (MCL § 700.123c.)**

History. Added by Pub Acts 1986, No. 61, imd eff March 27, which contained a section 2 providing: 'This amendatory act shall take effect July 1, 1986.'

Wisconsin Basic Will

853.50. Definitions

In ss. 853.50 to 853.62:

(1) "By right of representation" means that the issue of a deceased person inherit the share of an estate that their immediate ancestor would have inherited, if living.

(2) "Children" includes all children whether born or adopted before or after a Wisconsin basic will or basic will with trust is executed.

(3) "Issue" means children, grandchildren, great-grandchildren, and lineal descendants of more remote degrees, including those who occupy that relation by reason of adoption under s. 851.51 and children who are not legitimate and their lineal descendants to the extent provided by s. 852.05.

(4) "Testator" means any person choosing to make a Wisconsin basic will or basic will with trust.

(5) "Trustee" means a person so designated in a Wisconsin basic will with trust and any other person acting at any time as the trustee under a Wisconsin basic will with trust.

(6) "Wisconsin basic will" means a Wisconsin basic will executed in accordance with ss. 853.50 to 853.62.

(7) "Wisconsin basic will with trust" means a Wisconsin basic will with trust executed in accordance with ss. 853.50 to 853.62.

Historical Note

Source:
1983 Act 376, § 1, eff. May 2, 1984.

Law Review Commentaries
Trust B of the Wisconsin basic will may be a hazardous estate plan. Howard S. Erlanger and Marilyn L. Crowley, 59 Wis.B.Bull. 17 (Jan. 1986).

Library References
Wills ⇐69 et seq., 669 et seq.
C.J.S. Wills §§ 1, 127(1), 1004 et seq.

853.51. Execution of will

The only method of executing a Wisconsin basic will or basic will with trust is for all of the following to occur:

(1) The testator shall do all of the following:

(a) Complete the blanks, boxes and lines according to the instructions. Any failure to comply with instructions described under s. 853.54(3) does not affect the validity of the will.

(b) Sign the will.

(2) The witnesses shall do all of the following:

(a) Observe the testator's signing.

(b) Sign their names in the presence of the testator and each other.

Historical Note

Source:
1983 Act 376, § 1, eff. May 2, 1984.

853.52. Contents of wills

(1) There are 2 Wisconsin basic wills: the Wisconsin basic will and the Wisconsin basic will with trust.

(2) The Wisconsin basic will includes all of the following:

(a) The contents of the form for the Wisconsin basic will under s. 853.55.

(b) The full texts of each of the following:

1. The definitions under s. 853.50.

2. The clause under s. 853.57.

Additions in text are indicated by underlining; deletions by asterisks * * * 48

3. **The property disposition clause under s. 853.58 adopted by the testator.**

4. The mandatory clauses under s. 853.60.

(3) The Wisconsin basic will with trust includes all of the following:

(a) The contents of the form for the Wisconsin basic will with trust under s. 853.56.

(b) The full texts of each of the following:

1. The definitions under s. 853.50.

2. The clause under s. 853.57.

3. The property disposition clause under s. 853.59 adopted by the testator.

4. The mandatory clauses under ss. 853.60 and 853.61.

(4) Any person who prints forms for the Wisconsin basic will or basic will with trust shall place a signature line on each page of the printed document. A testator shall sign on each such line. Failure to comply with this subsection does not affect the validity of the will.

Historical Note

Source:

1983 Act 376, § 1, eff. May 2, 1984.

853.53. Selection of property disposition clause

If more than one property disposition clause is selected or if none is selected, the residuary property of a testator who signs a Wisconsin basic will or basic will with trust shall be distributed to the testator's heirs as if the testator did not make a will.

Historical Note

Source:

1983 Act 376, § 1, eff. May 2, 1984.

853.54. Revocation or revision

(1) A Wisconsin basic will or a basic will with trust may be revoked and may be amended in the same manner as other wills.

(2) Any additions to or deletions from the face of the form of the Wisconsin basic will or basic will with trust, other than in accordance with the instructions, shall be ineffective and shall be disregarded.

(3) Notwithstanding sub. (2), any failure to print in the proper places, provide the full name of a person or charity to receive a gift, include residences or use the phrase "not used" where applicable does not affect the validity of a Wisconsin basic will or basic will with trust.

Historical Note

Source:

1983 Act 376, § 1, eff. May 2, 1984.

853.55. Wisconsin basic will

The following is the form for the Wisconsin basic will:

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS, AND IT DOES NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

2. THIS WILL IS NOT DESIGNED TO REDUCE TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISER.

3. THIS WILL MAY NOT WORK WELL IF YOU HAVE CHILDREN BY A PREVIOUS MARRIAGE OR IF YOU HAVE BUSINESS PROPERTY, PARTICULARLY IF THE BUSINESS IS UNINCORPORATED.

4. YOU CANNOT CHANGE, DELETE OR ADD WORDS TO THE FACE OF THIS WISCONSIN BASIC WILL. YOU MAY REVOKE THIS WISCONSIN BASIC WILL, AND YOU MAY CHANGE IT BY SIGNING A NEW WILL.

5. THE FULL TEXT OF THIS WISCONSIN BASIC WILL, THE DEFINITIONS, THE PROPERTY DISPOSITION CLAUSES AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF WISCONSIN (CHAPTERS 851 TO 882 OF THE WISCONSIN STATUTES).

6. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD READ AND CAREFULLY FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL. ALL OF THE WITNESSES MUST WATCH YOU SIGN THIS WILL. EACH WITNESS MUST SIGN HIS OR HER NAME WITH YOU AND THE OTHER WITNESS PRESENT.

7. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

8. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

9. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

10. IF YOU HAVE CHILDREN UNDER 21 YEARS OF AGE, YOU MAY WISH TO USE THE WISCONSIN BASIC WILL WITH TRUST OR ANOTHER TYPE OF WILL.

11. IF THIS WISCONSIN BASIC WILL DOES NOT FIT YOUR NEEDS, YOU MAY WANT TO CONSULT WITH A LAWYER.

[A printed form for a Wisconsin basic will shall set forth the above notice in 10-point boldface type.]

WISCONSIN BASIC WILL OF

.....

(Insert Your Name)

Article 1. Declaration.

This is my will and I revoke any prior wills and codicils (additions to prior wills).

Article 2. Disposition of My Property

2.1. PERSONAL, RECREATIONAL AND HOUSEHOLD ITEMS. Except as provided in paragraph 2.2, I give all my furniture, furnishings, household items, recreational equipment, personal automobiles and personal effects to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

2.2. GIFTS TO PERSONS OR CHARITIES. I make the following gifts to the persons or charities in the cash amount stated in words (.... Dollars) and figures ($....) or of the property described. I SIGN IN EACH BOX USED. I WRITE THE WORDS "NOT USED" IN THE REMAINING BOXES. If I fail to sign opposite any gift, then no gift is made. If the person mentioned does not survive me or if the charity does not accept the gift, then no gift is made.

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.
		.....

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.
		....

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.
		....

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.
		....

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.
		....

2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph by writing my signature on the line next to the title of the Property Disposition Clause I wish to adopt. I SIGN ON ONLY ONE LINE. I WRITE THE WORDS "NOT USED" ON THE REMAINING LINE. If I sign on more than one line or if I fail to sign on any line, the property will go under Property Disposition Clause (b) and I realize that means the property will be distributed as if I did not make a will in accordance with Chapter 852 of the Wisconsin Statutes.

PROPERTY DISPOSITION CLAUSES (Select one.)

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION. ....

(b) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL. ....

Article 3. Nominations of Personal Representative and Guardian

3.1. PERSONAL REPRESENTATIVE. (Name at least one.)

I nominate the person or institution named in the first box of this paragraph to serve as my personal representative. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes. I confer upon my personal representative the authority to do and perform any act which he or she determines is in the best interest of the estate, with no limitations. This provision shall be given the broadest possible construction. This authority includes, but is not limited to, the power to borrow money, pledge assets, vote stocks and participate in reorganizations, to sell or

exchange real or personal property, and to invest funds and retain securities without any limitation by law for investments by fiduciaries.

FIRST PERSONAL REPRESENTATIVE

SECOND PERSONAL REPRESENTATIVE

THIRD PERSONAL REPRESENTATIVE

3.2. GUARDIAN. (If you have a child under 18 years of age, you should name at least one guardian of the child.)

If my spouse dies before I do or if for any other reason a guardian is needed for any child of mine, then I nominate the person named in the first box of this paragraph to serve as guardian of the person and estate of that child. If the person does not serve, then I nominate the person named in the second box of this paragraph to serve as guardian of that child.

FIRST GUARDIAN

SECOND GUARDIAN

3.3. BOND.

My signature in this box means I request that a bond, as set by law, be required for each individual personal representative or guardian named in this will. IF I DO NOT SIGN IN THIS BOX, I REQUEST THAT A BOND NOT BE REQUIRED FOR ANY OF THOSE PERSONS.

I sign my name to this Wisconsin Basic Will on .... (date), at .... (city), ... (state).

.....
Signature of Testator

STATEMENT OF WITNESSES (You must use two adult witnesses.)

EACH OF US DECLARES THAT THE TESTATOR SIGNED THIS WISCONSIN BASIC WILL IN OUR PRESENCE, ALL OF US BEING PRESENT AT THE SAME TIME, AND WE NOW, AT THE TESTATOR'S REQUEST, IN THE TESTATOR'S PRESENCE AND IN THE PRESENCE OF EACH OTHER, SIGN BELOW AS WITNESSES, DECLARING THAT THE TESTATOR APPEARS TO BE OF SOUND MIND AND UNDER NO UNDUE INFLUENCE.

Signature..... Residence Address: .....
Print Name
Here:..... .....

Signature..... Residence Address: .....
Print Name
Here:..... .....

Source:
1983 Act 376, § 1, eff. May 2, 1984.

853.56. Wisconsin basic will with trust

The following is the form for the Wisconsin basic will with trust:

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS FORM CONTAINS A TRUST FOR YOUR FAMILY. IF YOU DO NOT WANT TO CREATE A TRUST, DO NOT USE THIS FORM.

2. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS, AND IT DOES NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

3. THIS WILL IS NOT DESIGNED TO REDUCE TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISER.

4. THIS WILL MAY NOT WORK WELL IF YOU HAVE CHILDREN BY A PREVIOUS MARRIAGE OR IF YOU HAVE BUSINESS PROPERTY, PARTICULARLY IF THE BUSINESS IS UNINCORPORATED.

5. YOU CANNOT CHANGE, DELETE OR ADD WORDS TO THE FACE OF THIS WISCONSIN BASIC WILL WITH TRUST. YOU MAY REVOKE THIS WISCONSIN BASIC WILL WITH TRUST, AND YOU MAY CHANGE IT BY SIGNING A NEW WILL.

6. THE FULL TEXT OF THIS WISCONSIN BASIC WILL WITH TRUST, THE DEFINITIONS, THE PROPERTY DISPOSITION CLAUSES AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF WISCONSIN (CHAPTERS 851 TO 882 OF THE WISCONSIN STATUTES).

7. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD READ AND CAREFULLY FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL. ALL OF THE WITNESSES MUST WATCH YOU SIGN THIS WILL. EACH WITNESS MUST SIGN HIS OR HER NAME WITH YOU AND THE OTHER WITNESS PRESENT.

8. YOU SHOULD KEEP THIS WILL IN YOUR SAFE-DEPOSIT BOX OR OTHER SAFE PLACE.

9. THIS WILL TREATS ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

10. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

11. IF THIS WISCONSIN BASIC WILL WITH TRUST DOES NOT FIT YOUR NEEDS, YOU MAY WANT TO CONSULT WITH A LAWYER.

[A printed form for a Wisconsin basic will with trust shall set forth the above notice in 10-point boldface type.]

WISCONSIN BASIC WILL WITH TRUST OF

.....

(Insert Your Name)

Article 1. Declaration.

This is my will and I revoke any prior wills and codicils (additions to prior wills).

Article 2. Disposition of My Property

2.1. PERSONAL, RECREATIONAL AND HOUSEHOLD ITEMS. Except as provided in paragraph 2.2, I give all my furniture, furnishings, household items, recreational equipment, personal automobiles and personal effects to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

2.2. GIFTS TO PERSONS OR CHARITIES. I make the following gifts to the persons or charities in the cash amount stated in words (.... Dollars) and figures ($....) or of the property described. I SIGN IN EACH BOX USED. I WRITE THE WORDS "NOT USED" IN THE REMAINING BOXES. If I fail to sign opposite any gift, then no gift is made. If the person mentioned does not survive me or if the charity does not accept the gift, then no gift is made.

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.
		....

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.
		....

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.
		....

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.
		....

FULL NAME OF PERSON OR CHARITY TO RECEIVE GIFT. (Name only one. Please print.)	AMOUNT OF CASH GIFT OR DESCRIPTION OF PROPERTY.	SIGNATURE OF TESTATOR.
		....

2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph by writing my signature on the line next to the title of the Property Disposition Clause I wish to adopt. I SIGN ON ONLY ONE LINE. I WRITE THE WORDS "NOT USED" ON THE REMAINING LINES. If I sign on more than one line or if I fail to sign on any line, the property will be distributed as if I did not make a will in accordance with Chapter 852 of the Wisconsin Statutes.

IF YOU HAVE A SUBSTANTIAL ESTATE, CHOOSING CLAUSE (a) OR (b) MIGHT NOT BE THE MOST ADVANTAGEOUS TAX OPTION AVAILABLE TO YOU. If you have questions concerning the tax implications of these clauses, you should consult a competent tax advisor.

PROPERTY DISPOSITION CLAUSES (Select one.)

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY CHILDREN AND THE DESCENDANTS OF ANY DE-

CEASED CHILD BY RIGHT OF REPRESENTATION UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE. .....

(IF YOU CHOOSE THIS CLAUSE AND YOU DO NOT WANT 21 YEARS OF AGE TO APPLY, PRINT A DIFFERENT AGE, 18 OR ABOVE, AND SIGN ON THIS LINE.) .....

(b) TO MY SPOUSE AND CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION IN ONE TRUST TO PROVIDE FOR THEIR SUPPORT AND EDUCATION UNTIL I HAVE NO LIVING SPOUSE AND NO LIVING CHILD UNDER 21 YEARS OF AGE. .....

(IF YOU CHOOSE THIS CLAUSE AND YOU DO NOT WANT 21 YEARS OF AGE TO APPLY, PRINT A DIFFERENT AGE, 18 OR ABOVE, AND SIGN ON THIS LINE.) .....

Article 3. Nominations of Personal Representative, Trustee and Guardian

3.1. PERSONAL REPRESENTATIVE. (Name at least one.)

I nominate the person or institution named in the first box of this paragraph to serve as my personal representative. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes. I confer upon my personal representative the authority to do and perform any act which he or she determines is in the best interest of the estate, with no limitations. This provision shall be given the broadest possible construction. This authority includes, but is not limited to, the power to borrow money, pledge assets, vote stocks and participate in reorganizations, to sell or exchange real or personal property, and to invest funds and retain securities without any limitation by law for investments by fiduciaries.

FIRST PERSONAL REPRESENTATIVE [ ]

SECOND PERSONAL REPRESENTATIVE [ ]

THIRD PERSONAL REPRESENTATIVE [ ]

3.2. TRUSTEE. (Name at least one.)

Because it is possible that after I die my property may be put into a trust, I nominate the person or institution named in the first box of this paragraph to serve as trustee of that trust. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST TRUSTEE [ ]

SECOND TRUSTEE [ ]

THIRD TRUSTEE [ ]

3.3. GUARDIAN. (If you have a child under 18 years of age, you should name at least one guardian of the child.)

If my spouse dies before me or for any other reason a guardian is needed for any child of mine, then I nominate the person named in the first box of this paragraph to serve as

guardian of the person and estate of that child. If the person does not serve, then I nominate the person named in the second box of this paragraph to serve as guardian of that child.

FIRST GUARDIAN

SECOND GUARDIAN

3.4. BOND.

My signature in this box means I request that a bond, as set by law, be required for each individual personal representative, trustee or guardian named in this will. IF I DO NOT SIGN IN THIS BOX, I REQUEST THAT A BOND NOT BE REQUIRED FOR ANY OF THOSE PERSONS.

I sign my name to this Wisconsin Basic Will With Trust on .... (date), at .... (city), ... (state).

.....
Signature of Testator

STATEMENT OF WITNESSES (You must use two adult witnesses.)

EACH OF US DECLARES THAT THE TESTATOR SIGNED THIS WISCONSIN BASIC WILL WITH TRUST IN OUR PRESENCE, ALL OF US BEING PRESENT AT THE SAME TIME, AND WE NOW, AT THE TESTATOR'S REQUEST, IN THE TESTATOR'S PRESENCE AND IN THE PRESENCE OF EACH OTHER, SIGN BELOW AS WITNESSES, DECLARING THAT THE TESTATOR APPEARS TO BE OF SOUND MIND AND UNDER NO UNDUE INFLUENCE.

Signature..... Residence Address: .....
Print Name..... .....
Here:

Signature..... Residence Address: .....
Print Name..... .....
Here:

Source:

1983 Act 376, § 1, eff. May 2, 1984.

853.57. Personal, recreational and household items

The following is the full text of paragraph 2.1 of the Wisconsin basic will and the basic will with trust:

If my spouse survives me, I give my spouse all my books, jewelry, clothing, personal automobiles, recreational equipment, household furnishings and effects, and other tangible articles of a household, recreational or personal use, together with all policies of insurance insuring any such items. If my spouse does not survive me, the personal representative shall distribute those items among my children who survive me, and shall distribute those items in as nearly equal shares as feasible in the personal representative's discretion. If none of my children survive me, the items described in this paragraph shall become part of the residuary estate.

Historical Note

Source:

1983 Act 376, § 1, eff. May 2, 1984.

853.58. Residuary estate; basic will

The following is the full text of the property disposition clauses referred to in paragraph 2.3 of the Wisconsin basic will:

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION.

If my spouse survives me, then I give all my residuary estate to my spouse. If my spouse does not survive me, then I give all my residuary estate to my descendants by right of representation who survive me. If my spouse and descendants do not survive me, the personal representative shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of Wisconsin in effect on the date of my death.

(b) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL:

The personal representative shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of Wisconsin in effect on the date of my death.

Historical Note

Source:

1983 Act 376, § 1, eff. May 2, 1983.

853.59. Residuary estate; basic will with trust

The following is the full text of the property disposition clauses referred to in paragraph 2.3 of the Wisconsin basic will with trust, except that if a different age is specified by the testator in the Wisconsin basic will with trust, that specified age is substituted for 21 years in this section:

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE.

(1) If my spouse survives me, then I give all my residuary estate to my spouse.

(2) If my spouse does not survive me and if any child of mine under 21 years of age survives me, then I give all my residuary estate to the trustee, in trust, on the following terms:

(A) As long as any child of mine under 21 years of age is living, the trustee shall distribute from time to time to or for the benefit of any one or more of my children and the descendants of any deceased child (the beneficiaries) by right of representation of any age as much, or all, of the principal or net income of the trust or both, as the trustee deems necessary for their health, support, maintenance and education of my descendants. Any undistributed income shall be accumulated and added to the principal. "Education" includes, but is not limited to, college, vocational and other studies after high school, and reasonably related living expenses. Consistent with the trustee's fiduciary duties, the trustee may distribute trust income or principal in equal or unequal shares and to any one or more of the beneficiaries to the exclusion of other beneficiaries. In deciding on distributions, the trustee may take into account the beneficiaries' other income, outside resources or sources of support, including the capacity for gainful employment of a beneficiary who has completed his or her education.

(B) The trust shall terminate when there is no living child of mine under 21 years of age. The trustee shall distribute any remaining principal and accumulated net income of the trust to my descendants by right of representation who are then living. If principal becomes distributable to a person under legal disability, the trustee may postpone the distribution until the disability is removed. In that case, the assets shall be administered as a separate trust under this Wisconsin basic will with trust and the net income and principal shall be applied for the benefit of the beneficiary at such times and in such

amounts as the trustee considers appropriate. If the beneficiary dies before the removal of the disability, the remaining assets shall be distributed to his or her estate.

(3) If my spouse does not survive me and if no child of mine under 21 years of age survives me, then I give all my residuary estate to my descendants by right of representation who survive me. If my spouse and descendants do not survive me, the personal representative shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of Wisconsin in effect on the date of my death.

(b) TO MY SPOUSE AND CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD BY RIGHT OF REPRESENTATION IN ONE TRUST TO PROVIDE FOR THEIR SUPPORT AND EDUCATION UNTIL I HAVE NO LIVING SPOUSE OR CHILD UNDER 21 YEARS OF AGE.

(1) I give all my residuary estate to the trustee, in trust, on the following terms:

(A) As long as my spouse or any child of mine under 21 years of age is living, the trustee shall distribute from time to time to or for the benefit of my spouse or any one or more of my children and the descendants of any deceased child (the beneficiaries) by right of representation of any age as much or all, of the principal or net income of the trust or both as the trustee deems necessary for their health, support, maintenance and education. Any undistributed income shall be accumulated and added to the principal. "Education" includes, but is not limited to, college, vocational and other studies after high school, and reasonably related living expenses. The welfare of my spouse is the primary consideration regarding distributions. Consistent with the trustee's fiduciary duties, the trustee may distribute trust income or principal in equal or unequal shares and to any one or more of the beneficiaries to the exclusion of other beneficiaries. In deciding on distributions, the trustee may take into account the beneficiaries' other income, outside resources or sources of support, including the capacity for gainful employment of a beneficiary who has completed his or her education.

(B) The trust shall terminate when my spouse is not living and there is no living child of mine under 21 years of age. The trustee shall distribute any remaining principal and accumulated net income of the trust to my descendants by right of representation who are then living. If principal becomes distributable to a person under legal disability, the trustee may postpone the distribution until the disability is removed. In that case, the assets shall be administered as a separate trust under this Wisconsin basic will with trust and the net income and principal shall be applied for the benefit of the beneficiary at such times and in such amounts as the trustee considers appropriate. If the beneficiary dies before the removal of the disability, the remaining assets shall be distributed to his or her estate.

(2) If no child of mine under 21 years of age survives me, then I give all my residuary estate to my descendants by right of representation who survive me. If my spouse and descendants do not survive me, the personal representative shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of Wisconsin in effect on the date of my death.

Historical Note

Source:

1983 Act 376, § 1, eff. May 2, 1984.

853.60: Mandatory clauses

The Wisconsin basic will and basic will with trust include the following mandatory clauses:

(1) Intestate disposition. If the testator has not made an effective disposition of the residuary estate, the personal representative shall distribute it to the testator's heirs at law, their identities and respective shares to be determined according to the laws of the state of Wisconsin in effect on the date of the testator's death.

(2) Powers of personal representative. (a) In addition to any powers conferred upon personal representatives by law, the personal representative may do any of the following:

1. Sell estate assets at public or private sale, for cash or on credit terms.

2. Lease estate assets without restriction as to duration.

3. Invest any surplus moneys of the estate in real or personal property, as the personal representative deems advisable.

(b) The personal representative may distribute estate assets otherwise distributable to a minor beneficiary to any of the following:

1. The guardian of the minor's person or estate.

2. Any adult person with whom the minor resides and who has the care, custody or control of the minor.

3. A custodian, serving on behalf of the minor under the uniform gifts to minors act or uniform transfers to minors act of any state.

(c) On any distribution of assets from the estate, the personal representative may partition, allot and distribute the assets in kind, including undivided interests in an asset or in any part of it; partly in cash and partly in kind; or entirely in cash. If a distribution is being made to more than one beneficiary, the personal representative may distribute assets among them on a prorated or nonprorated basis, with the assets valued as of the date of distribution.

(3) Powers of guardian. A guardian of the person or of the estate nominated in the Wisconsin basic will or basic will with trust, and subsequently appointed, shall have all of the powers conferred by law.

Historical Note

Source:

1983 Act 376, § 1, eff. May 2, 1984.
1987 Act 191, § 1, eff. April 8, 1988.

853.61. Mandatory clauses; basic will with trust

The Wisconsin basic will with trust includes the following mandatory clauses:

(1) Ineffective disposition. If, at the termination of any trust created in the Wisconsin basic will with trust, there is no effective disposition of the remaining trust assets, then the trustee shall distribute those assets to the testator's then living heirs at law, their identities and respective shares to be determined as though the testator had died on the date of the trust's termination and according to the laws of the state of Wisconsin then in effect.

(2) Powers of trustee. (a) In addition to any powers conferred upon trustees by law, the trustee shall have all the powers listed in s. 701.16.

(b) In addition to the powers granted in par. (a), the trustee may:

1. Hire and pay from the trust the fees of investment advisors, accountants, tax advisors, agents, attorneys and other assistants for the administration of the trust and for the management of any trust asset and for any litigation affecting the trust.

2. On any distribution of assets from the trust, the trustee may partition, allot and distribute the assets in kind, including undivided interests in an asset or in any part of it; partly in cash and partly in kind; or entirely in cash. If a distribution is being made to more than one beneficiary, the trustee shall have the discretion to distribute assets among them on a prorated or nonprorated basis, with the assets valued as of the date of distribution.

3. The trustee may, upon termination of the trust, distribute assets to a custodian for a minor beneficiary under the uniform gifts to minors act or uniform transfers to minors act of any state. The trustee is free of liability and is discharged from any further accountability for distributing assets in compliance with this section.

(3) Trust administrative provisions. The following provisions shall apply to any trust created by a Wisconsin basic will with trust:

(a) The interests of trust beneficiaries shall not be transferable by voluntary or involuntary assignment or by operation of law and shall be free from the claims of creditors and from attachment, execution, bankruptcy or other legal process to the fullest extent permissible by law.

(b) The trustee shall be entitled to reasonable compensation for ordinary and extraordinary services, and for all services in connection with the complete or partial termination of any trust created by this will.

(c) All persons who have any interest in a trust under a Wisconsin basic will with trust are bound by all discretionary determinations the trustee makes in good faith under the authority granted in the Wisconsin basic will with trust.

Historical Note

Source:

1983 Act 376, § 1, eff. May 2, 1984.
1987 Act 191, § 2, eff. April 8, 1988.

853.62. Date of execution of will

Except as specifically provided in ss. 853.50 to 853.61, a Wisconsin basic will or basic will with trust includes only the texts of the property disposition clauses and the mandatory clauses as they exist on the day the will is executed.

Historical Note

Source:

1983 Act 376, § 1, eff. May 2, 1984.

QUESTIONS AND ANSWERS ABOUT THIS CALIFORNIA STATUTORY WILL

The following information, in question and answer form, is not a part of the California Statutory Will. It is designed to help you understand about Wills and to decide if this Will meets your needs.

1. What happens if I die without a Will? If you die without a Will, what you own (your "assets") in your name alone Will be divided among your spouse, children or other relatives according to state law. The court Will appoint a relative to collect and distribute your assets.

2. What can a Will do for me? In a Will you can designate who Will receive your assets at your death. You can designate someone (called an "executor") to appear before the court, collect your assets, pay your debts and taxes, and distribute your assets as you specify. You can nominate a guardian to raise your children who are under age 18. You can designate someone to manage assets for your children until they reach age 18.

3. Does a Will avoid probate? No. Whether or not you die with a Will, assets in your name alone usually go through the court probate process. The court's first job is to determine if your Will is valid.

4. What is community property? Can I give away my share in my Will? If you are married and you or your spouse earned money during your marriage from work and wages, that money (and the assets bought with it) is community property. Your Will can only give away your one-half of community property. Your Will cannot give away your spouse's one-half of community property.

5. Does my Will give away all of my assets? Do all assets go through probate? No. Money in a joint tenancy bank account automatically belongs to the other named owner without probate. If your spouse or child is on the deed to your house as a joint tenant, the house automatically passes to him or her. Life insurance and retirement plan benefits may pass directly to the named beneficiary. A Will does not necessarily control how these types of "non-probate" assets pass at your death.

6. Are there different kinds of Wills? Yes. There are handwritten Wills, typewritten Wills, attorney-prepared Wills and statutory Wills. All are valid if done precisely as the law requires. You should see a lawyer if you do not want to use this statutory Will or if you do not understand this form.

7. Who may use this Will? This Will is based on California law. It is designed for only California residents. You may use this form if you are single, married or divorced. You must be age 18 or older and of sound mind.

8. Are there any reasons why I should NOT use this statutory Will? Yes. This is a simple Will. It is not designed to reduce death or any other taxes. Talk to a lawyer to do tax planning, particularly if (i) your assets Will be worth more than $600,000 at your death, or (ii) you own business related assets, or (iii) you want to create a trust fund for your children's education or other purposes, or (iv) you own assets in some other state, or (v) you want to disinherit your spouse or descendants, or (vi) you have valuable interests in pension or profit sharing plans. You should talk to a lawyer who knows about estate planning if this Will does not meet your needs. This Will treats most adopted children like natural children. You should talk to a lawyer if you have step-children or foster children whom you have not adopted.

9. May I add or cross out any words on this Will? No. If you do, the court may ignore the change or the crossed out or added words. You may only fill in the blanks. You may sign a separate amendment (called a codicil) to this Will. Talk to a lawyer if you want to do something with your assets which is not allowed in this form.

10. May I change my Will? Yes. A Will is not effective until you die. You may make and sign a new Will. You may change your Will at any time, but only by an amendment (called a codicil). You can give away or sell your assets before your death. Your Will

only affects what you own at death.

11. Where should I keep my Will? After you and the witnesses sign the Will, keep your Will in your safe deposit box or other safe place. You should tell trusted family members where your Will is kept.

12. When should I change my Will? You should make and sign a new Will if you marry or divorce after you sign this Will. Divorce (dissolution of marriage) or annulment automatically cancels (a) all property stated to pass to a former husband or wife under this Will, and (b) designation of a former spouse as executor, custodian or guardian. You should sign a new Will when you have more children, or if your spouse or a child dies. You may want to change your Will if there is a large change in the value of your assets.

13. What can I do if I do not understand something in this Will? If there is anything in this Will you do not understand, ask a lawyer to explain it to you.

14. What is an Executor? An "executor" is the person you name to collect your assets, pay your debts and taxes, and distribute your assets as the court directs. It may be a person or it may be a a qualifed bank or corporation.

15. What is a guardian? Do I need to designate one? If you have children under age 18, you should designate a guardian of their "persons" to raise them. You may also want to designate a guardian of their "estates" to manage their assets for them until they reach age 18. At age 18, they receive their assets outright. Some people prefer to designate a "custodian" to manage assets until as late as age 25 (see question 17 below).

16. Should I require a bond? You may require that a guardian or executor post a "bond". A bond is a form of insurance (the cost of the bond is paid from the estate's assets) to replace assets that may be mismanaged or stolen by the guardian or executor.

17. What is a custodian? A "custodian" is a person you may designate to manage assets for someone who is not over age 25 and who receives assets under your Will. Until any age you choose (up to and including 25), the custodian manages the assets and pays as much as the custodian determines is proper for health, support, maintenance and education. Any remaining assets pass outright at any age you choose (up to and including 25). No bond is required of a custodian.

18. What is a trust? A trust is a long-term arrangement where a manager (called a "trustee") invests and manages assets for someone (called a "beneficiary") who may be young, or immature, or elderly, or who has a problem or disability. A trust may be created in a Will or outside of a Will. The trustee invests and manages the assets for the the beneficiary under the terms you specify. Trusts are too complicated to be used in this simple Will. You should see a lawyer if you want to establish a trust.

19. Should I ask people if they are willing to serve before I designate them as an executor or guardian or custodian? Probably yes. Some people and entities may not consent to serve or may not be qualified to act.

INSTRUCTIONS FOR COMPLETING THIS WILL

1. Fill in the blanks. Read the Will first. Fill in the blanks. You may choose only one choice under paragraph 3 and only one choice under paragraph 5. Sign your name in the box to show which choice you select. If you do not choose any choice, or if you choose more than one choice, the court will distribute your assets as if you died without a Will. This means that your assets could pass to distant relatives, or relatives of a predeceased spouse, or both.

2. Date and sign the Will and have two witnesses sign it. You must date and sign this Will. Two (2) witnesses should watch you sign this Will. The witnesses should not be people who Will receive assets under this Will. They should read the language immediately above their signatures before signing.

CALIFORNIA STATUTORY WILL OF _____

1. Will. This is my Will. I revoke all prior Wills and codicils.

2. Identity of My Family. My spouse is _____
(INSERT SPOUSE'S NAME OR WRITE "NONE")

My children now living are (INSERT NAMES OR WRITE "NONE"):

_____ _____
_____ _____
_____ _____

3. Items of Personal Property. I give all my furniture, furnishings, household items, clothing, jewelry, automobiles and personal items as follows (SELECT ONE CHOICE ONLY BY SIGNING IN THE APPROPRIATE BOX):

a. Choice One: If I am now married, to my present spouse, if living; otherwise equally among my children (with any deceased child's share passing to the deceased child's descendants). ☐

b. Choice Two: Nothing to my spouse (if I am married); all equally among my children (any deceased child's share shall pass to that child's descendants). ☐

c. Choice Three: All to the following person: ☐

_____

d. Choice Four: Equally among the following persons who survive me (INSERT EACH PERSON'S NAME):

Names of persons: _____

_____
_____
_____ ☐

4. Cash Gifts. I make the following cash gifts in the amounts stated, and I sign my name in the box after each gift. If I don't sign in the box, I do not make a gift. If a named person does not survive me, the gift to that person is void. No death tax shall be paid from these gifts. SIGN AFTER EACH GIFT.

Name of Person or Charity	Amount of Cash Gift	You sign here
_____	_____	☐
_____	_____	☐
_____	_____	☐
_____	_____	☐

5. Balance of My Assets. I give the balance of my other assets as provided below (SELECT ONE CHOICE ONLY BY SIGNING IN THE APPROPRIATE BOX). If I sign in more than one box or if I don't sign in any box, the court will distribute my assets as if I did not make a Will.

a. Choice One: If I am now married, to my present spouse, if living; otherwise equally among my children (with any deceased child's share passing to the deceased child's descendants). ☐

b. Choice Two: Nothing to my spouse (if I am married); all equally among my children (any deceased child's share shall pass to that child's descendants). ☐

c. Choice Three: Equally among the following persons who survive me (any deceased person's share shall be added equally among the surviving persons' shares):
Names of persons: _____
_____
_____
_____ ☐

d. Choice Four: To those persons designated under California law as if I did not have a Will. ☐

6. Special Provisions for Persons Under 25. If a portion of my estate passes to a person under age 25, that portion shall be held as follows. Choice One applies if I don't sign either box. (SELECT ONE CHOICE ONLY BY SIGNING IN THE APPROPRIATE BOX):

a. Choice One: Outright to the person (and if the person is under age 18, to the Guardian of the person's Property designated in paragraph 7 below) ☐

b. Choice Two: To the persons named below in the order designated as custodian for the person until age ☐ (insert any age between 18 and 25; if you do not select an age, age 21 will apply) under the California Uniform Transfers to Minors Act (and if I don't name a custodian, the court may designate one): ☐

Name of First Custodian To Serve
Name of Second Custodian To Serve
Name of Third Custodian To Serve

7. Guardian. If I have a child under age 18 and the child does not have a living parent at my death, I nominate the following persons to serve in the order designated as guardian of each of my children who requires one (a person can serve as guardian of the Person, or of the Property, or of both. A corporation can serve only as guardian of the Property):

Name of First Guardian of the Person	Name of First Guardian of the Property
Name of Second Guardian of the Person	Name of Second Guardian of the Property
Name of Third Guardian of the Person	Name of Third Guardian of the Property

8. Executor. I nominate the following persons or corporations to serve in the order designated as executor (YOU MAY NAME ONE, TWO OR THREE PERSONS OR CORPORATIONS TO SERVE CONSECUTIVELY; IF YOU DON'T NAME ANY, THE COURT WILL APPOINT ONE FOR YOU):

Name of First Executor To Serve
Name of Second Executor To Serve
Name of Third Executor To Serve

9. Bond. My signature in this box means a bond is not required for any person named as executor or guardian. A bond must be required if I do not sign in this box:

No bond shall be required. [ ]

(NOTICE: YOU MUST SIGN THIS WILL IN THE PRESENCE OF TWO (2) WITNESSES. THE WITNESSES MUST SIGN THEIR NAMES IN YOUR PRESENCE AND IN EACH OTHER'S PRESENCE. YOU MUST FIRST READ TO THEM THE FOLLOWING TWO SENTENCES).

This is my Will. I ask the persons who sign below to be my witnesses. Signed on _____, at _____, California.
(date) (City)

[ ]
Signature of Maker of Will

(NOTICE TO WITNESSES: TWO (2) ADULTS MUST SIGN AS WITNESSES. EACH WITNESS MUST READ THE FOLLOWING CLAUSE BEFORE SIGNING. THE WITNESSES MUST NOT BE RELATED TO THE MAKER AND SHOULD NOT RECEIVE ASSETS UNDER THIS WILL).

Each of us declares under penalty of perjury under the laws of the State of California that the following is true and correct:

(i) on the date written below the maker of this Will declared to us that this instrument was the maker's Will and requested us to act as witnesses to it;

(ii) we understand this is the maker's Will;

(iii) the maker signed this Will in our presence, all of us being present at the same time;

(iv) we now, at the maker's request, and in the maker's and each other's presence, sign below as witnesses;

(v) we believe the maker is of sound mind and memory;

(vi) we believe that this Will was not procured by duress, menace, fraud or undue influence;

(vii) the maker is age 18 or older; and

(viii) each of us is now age 18 or older, is a competent witness, and resides at the address set forth after his or her name.

Dated: _____, 19__

Signature [ ] Residence Address: _____
Print Name Here: _____ _____

Signature [ ] Residence Address: _____
Print Name Here: _____ _____

AT LEAST TWO WITNESSES MUST SIGN
A NOTARY IS NOT REQUIRED OR SUFFICIENT

Definitions, Rules of Construction and Text of the California Statutory Will

1. Definitions and Rules of Construction. These definitions and rules govern the construction of this California Statutory Will.

(a) "Spouse" means the maker's husband or wife at the time the maker signs the California Statutory Will.

(b) "Executor" means both the person designated as an executor in a California Statutory Will and any other person acting at any time as executor or administrator of a California Statutory Will.

(d) "Custodian" means the person designated as a custodian in a California Statutory Will and any other person acting at any time as the custodian under the California Uniform Transfers to Minors Act, or the California Uniform Gifts to Minors Act, or any other state's Uniform Transfers to Minors Act or Uniform Gifts to Minors Act.

(e) "Guardian" means the person or persons designated as guardian of the person or guardian of the property of a minor in a California Statutory Will and and any other person acting at any time as a court appointed guardian of the person or estate of a minor.

(f) "Descendants" means children, grandchildren, and their lineal descendants of all generations, with the relationship of parent and child at each generation being determined as provided in California Probate Code Section 6152. A reference to "descendants" in the plural includes a single descendant where the context so requires.

(g) Masculine pronouns include the feminine, and plural and singular words include each other, where appropriate.

(h) Property to be distributed under a California Statutory Will to a person's descendants shall be divided into as many equal shares as there are (1) then living descendants of the nearest degree of living descendants and (2) deceased descendants of that same degree who leave living descendants. Each living descendant of the nearest degree shall receive one share. The share of each deceased descendant of that same degree shall be divided among his or her descendants in the same manner.

(i) "Person" includes individuals and corporations.

2. Property Disposition Clauses.

a. The following are the full texts of paragraphs 3a through 3d inclusive of this California Statutory Will:

(1) Paragraph 3a (Choice One): If I am married and my present spouse survives me, I give my spouse all my books, jewelry, clothing, automobiles, household furnishings and effects, and other tangible articles of a household or personal use. If my present spouse does not survive me, I give these items to my children in equal shares (with the share of any then deceased child passing to that deceased child's then living descendants). If none of my children or other descendants survives me, these items shall become part of the balance of my estate.

(2) Paragraph 3b (Choice Two): I give all my books, jewelry, clothing, automobiles, household furnishings and effects, and other tangible articles of a household or personal use to my children in equal shares (with the share of any then deceased child passing to that deceased child's then living descendants). If none of my children or other descendants survives me, these items shall become part of the balance of my estate.

(3) Paragraph 3c (Choice Three): I give all my books, jewelry, clothing, automobiles, household furnishings and effects, and other tangible articles of a household or personal use to the person named below. If the named person does not survive me, these items shall become part of the balance of my estate.

(4) Paragraph 3d (Choice Four): I give all my books, jewelry, clothing, automobiles, household furnishings and effects, and other tangible articles of a household or personal use to those of the persons named below who survive me, to be divided among them in as nearly equal shares as practical in my executor's discretion. The share of any named person who does not survive me is void. If none of the named persons survives me, these items shall become part of the balance of my estate.

b. The following are the full texts of paragraphs 5a through 5d inclusive of this California statutory Will:

(1) Paragraph 5a (Choice One): If I am married and my present spouse survives me, I give my spouse the balance of my estate. If my present spouse does not survive me, I give the balance to my children in equal shares (with the share of any then deceased child passing to that deceased child's then living descendants). If none of my children or other descendants survives me, I give the balance to my heirs at law.

(2) Paragraph 5b (Choice Two): I give the balance of my estate to my children in equal shares (with the share of any then deceased child passing to that deceased child's then living descendants). If none of my children or other descendants survives me, I give the balance to my heirs at law.

(3) Paragraph 5c (Choice Three): I give the balance of my estate to those of the persons named below who survive me, to be divided among them in equal shares. The share of any named person who does not survive me is void. If none of the named persons survives me, I give the balance of my estate to my heirs at law.

(5) Paragraph 5d (Choice Four): I give the balance of my estate to my heirs at law.

c. The following are the full texts of paragraphs 6a and 6b of this California statutory Will:

(1) Paragraph 6a (Choice One): If a portion of my estate passes to a person who has not attained age 18 years, said portion shall be distributed to the Guardian of the person's property.

(2) Paragraph 6b (Choice Two): If a portion of my estate passes to a person who has not attained age __ years, said portion shall be distributed to the persons named below in the order designated as Custodian for the person until age __ years under the California Uniform Transfers to Minors Act. If no age between 18 and 25 is inserted in the two blanks above, then age 21 shall apply. If no custodian named below is able and willing to serve at any time (or if I have failed to designate a custodian), the court supervising administration of my probate estate may designate a custodian.

3. Mandatory Clauses. The mandatory clauses of this California Statutory Will are as follows:

a. Intestate Disposition. If the maker has not made an effective disposition of the balance of the estate, the executor shall distribute it to the maker's heirs at law.

b. Executor's Powers.

(1) The executor has all powers now or later conferred upon executors by California law. This includes all powers granted under the Independent Administration of Estates Act. This also includes the power to: (A) sell estate assets at public or private sale with or without notice, for cash or on credit terms, (B) lease estate assets without restriction as to duration, and (C) invest any surplus moneys of the estate in real or personal property, as the executor deems advisable.

(2) The executor may distribute estate assets otherwise distributable to a minor beneficiary to (A) the guardian of the minor's person or estate, (B) any adult person with whom the minor resides and who has the care, custody, or control of the minor, or (C) a custodian for the minor. The executor is free of liability and is discharged from any further accountability for distributing assets pursuant to this paragraph.

(3) On any distribution of assets from the estate, the executor shall have the discretion to partition, allot, and distribute the assets (A) in kind, including undivided interests in an asset or in any part of it, or (B) partly in cash and partly in kind, or (C) entirely in cash. If a distribution is made to more than one beneficiary, the executor shall have the discretion to distribute assets among them on a pro rata or non-pro rata basis, with the assets valued as of the date of distribution.

c. Guardian's Powers. A guardian of the person nominated in the California Statutory Will has the same authority with respect to the person of the ward as a parent having legal custody of a child would have. A guardian of the estate nominated in a California Statutory Will has all of the powers conferred by California law. All powers granted to guardians in this paragraph may be exercised without court authorization.